

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 142

COLUMBIA RIVER PACKERS ASSOCIATION, INC.,
PETITIONER,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT,
ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 7, 1941.

CERTIORARI GRANTED OCTOBER 20, 1941.



No. 9456.

United States
Circuit Court of Appeals

for the Ninth Circuit.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE, GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS, LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEECROFT, HENRY BOYE, WILLIS KOOGLER, LEO LYSTER, LYLE LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S UNION, its officers and members,

Appellants,

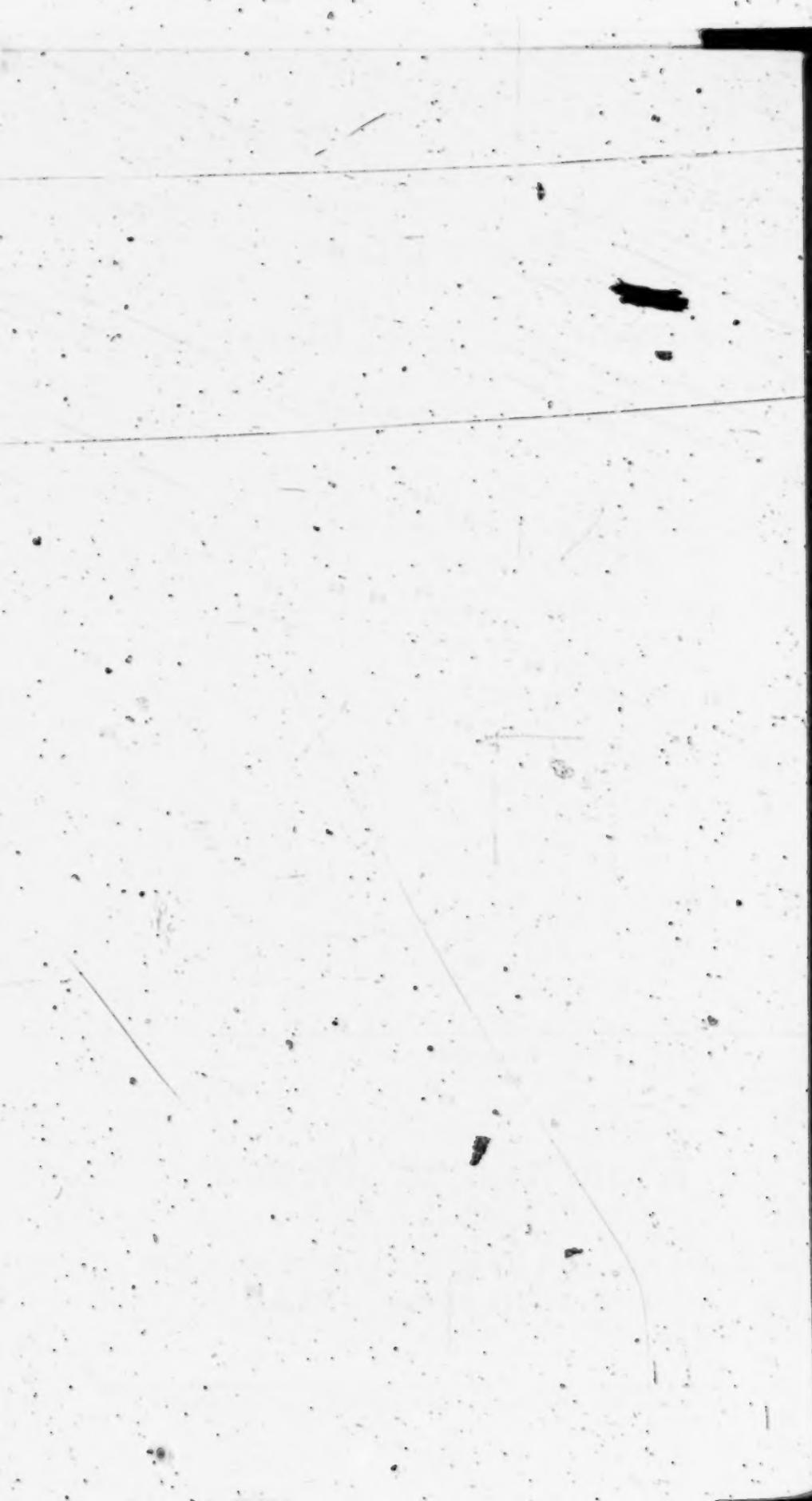
vs.

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the District of Oregon.

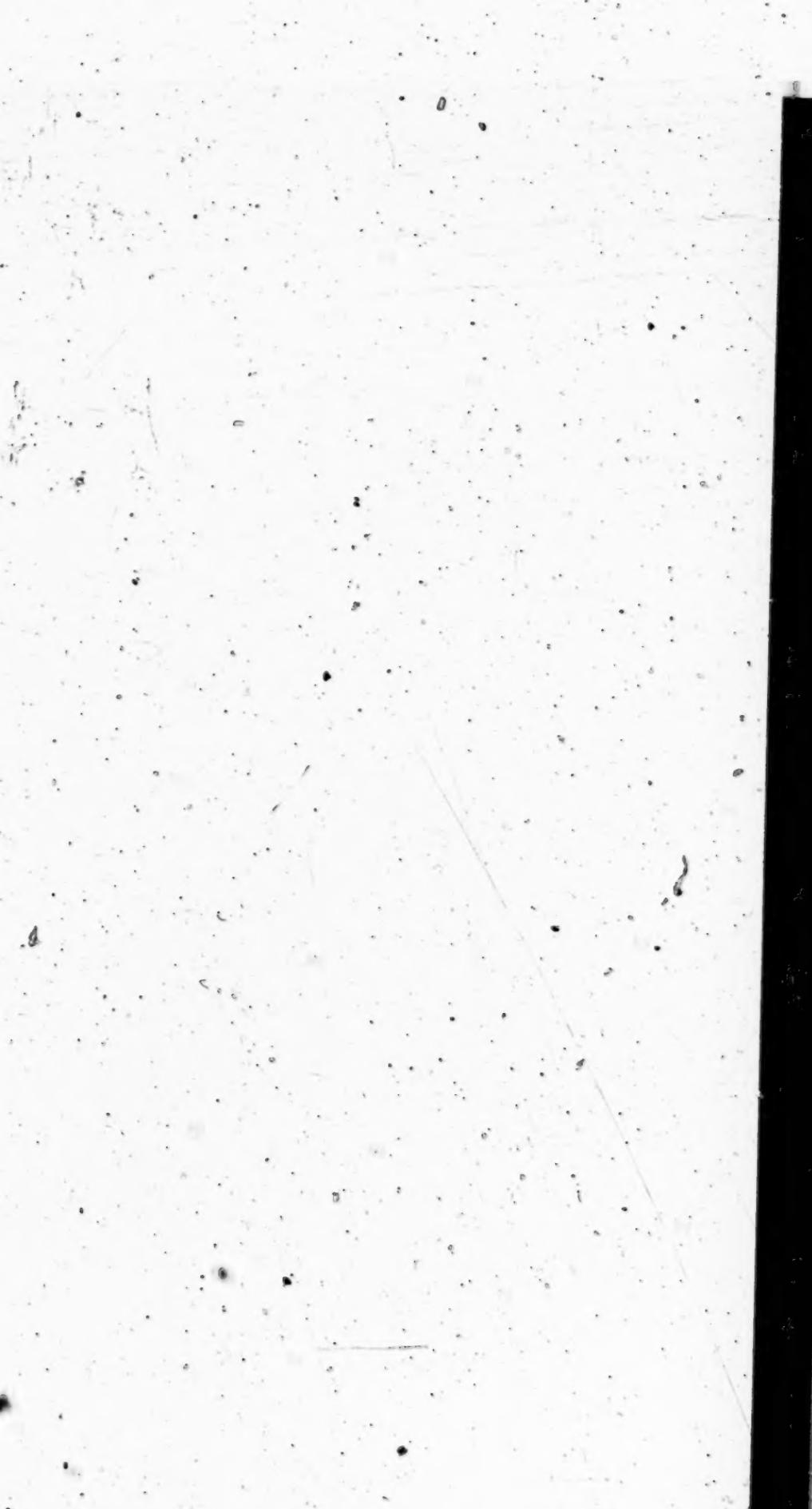


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(Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.)

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for Appellee.

In the District Court of the United States for the
District of Oregon.

March Term, 1939.

Be it remembered, That on the 4th day of May, 1939, there was duly filed in the District Court of the United States for the District of Oregon, a Complaint, in words and figures as follows, to wit:

[1*]

In the District Court of the United States for the District of Oregon.

No. Civ. 126

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation,

Plaintiff,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHAS. J. MACKIE, GLENN MURDICK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS, LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEECROFT, HENRY BOYE, WILLIS KOOGLER, LEO LYSTER, LYLE LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S UNION, its officers and members, JOHN DOE No. 1, JOHN DOE No. 2, JOHN DOE No. 3, JOHN DOE No. 4, JOHN DOE No. 5, JOHN DOE No. 6, JOHN DOE No. 7, JOHN DOE No. 8, JOHN DOE No. 9, JOHN DOE No. 10, JOHN DOE No. 11, JOHN DOE No. 12, RICHARD ROE No. 1, RICHARD

ROE No. 2, RICHARD ROE No. 3, RICHARD ROE No. 4, RICHARD ROE No. 5, RICHARD ROE No. 6, RICHARD ROE No. 7, RICHARD ROE No. 8, RICHARD ROE No. 9, RICHARD ROE No. 10, RICHARD ROE No. 11, RICHARD ROE No. 12, PETER ROE No. 1, PETER ROE No. 2, PETER ROE No. 3, PETER ROE No. 4, PETER ROE No. 5 and PETER ROE No. 6,

Defendants.

~~COM~~PLAINT.

The plaintiff for its cause of action and suit against the defendants complains and alleges as follows:

1.

That the plaintiff is a corporation duly and legally organized, incorporated, and doing business under and by virtue of the laws of the State of Oregon, having its principal office and place of business at Astoria, in said state, and under the authority of its articles of incorporation, charter and by-laws is engaged in catching, purchasing, processing, canning, merchandising and distributing fish and other products of the Pacific Ocean and its [2] tributaries, and in said connection acquires, transports, processes, cans, sells, disposes of, and distributes marine products caught and acquired from the Pacific Ocean and its tributaries in the markets of the United States and the states there-

of, and in various foreign countries including England, Australia, Germany and other countries.

II.

That in carrying on its said business it purchases fish and other products of the Pacific Ocean and its tributaries from various and sundry independent contractors, who capture, and acquire the same, and transport the same within and without the State of Oregon, and dispose of the same to the plaintiff.

That said independent contractors are fishermen, and in the operation of their several businesses of fishing for the purpose of capturing and acquiring fish and other marine products own, or under leases control boats, nets, and other fishing gear and appliances severally, and individually, of a value ranging from \$2500.00 to \$15,000, and said individual fishermen not only own, or under lease control their fishing equipment, but largely employ the labor of others to assist them in carrying on their fishing operations.

Said fishermen are directly employed by no one, but are independent contractors, who fish when and where they choose, and dispose of their fish to whomsoever they select.

That in each area of the states of Oregon, Washington and the territory of Alaska, adjacent to which fish and other marine products of the Pacific Ocean and its tributaries are captured, there is an established market price for the various products,

and there are a number of established purchasers, such as the plaintiff, who purchase from said fishermen their various products, paying therefor the established market price. [3]

III.

That in carrying on its said business it has been and is the practice of the plaintiff, along with other dealers to purchase fish and other products of the Pacific Ocean and its tributaries, which have been caught, captured and reduced to possession and ownership by various and sundry persons, all of which fish, and other marine products, have been caught, captured and reduced to possession and ownership by fishermen either on the Pacific Ocean within and without the territorial jurisdiction of the States of Oregon and Washington, and/or upon navigable streams thereof, which said fish and other marine products have been transported from the point of capture to land docks, wharves and other receiving instrumentalities, on or in the vicinity of land for sale and delivery to the plaintiff and other dealers and processors, and thereby the plaintiff has been engaged in commerce between the several states and territories of the United States.

IV.

That in transacting its business, the plaintiff owns and operates two large ocean-going steamships, and a large number of smaller ocean-going

tenders, and other marine facilities, and also operates plants, factories and processing institutions in said territory of Alaska, and the states of Oregon and Washington, at which it purchases, processes, cans and places in condition for sale and distribution its products in the various states and territories of the United States, and the plaintiff sells, and for many years last past has sold and distributed its products in the states and territories of the United States and in England and continental Europe and Australia.

V.

That for more than fifty years last past the plaintiff and its predecessor corporation in its business, has caught and purchased marine products taken and acquired from the Pacific Ocean [4] and its tributaries, which it; and its predecessor have processed, canned and otherwise placed in condition for sale and disposal in interstate commerce, and in carrying on its said business it has been and is the necessary practice of the plaintiff to contract in advance for the sale of its products in interstate commerce, and in said connection has, and immediately prior to the filing of this complaint had entered into contracts for the sale and disposal of shad, shad roe, salmon and other products of the Pacific Ocean and tributaries and waters adjacent to the states of Washington and Oregon, and lying within and without the territorial limits thereof. That said contracts were entered into in anticipa-

tion of a free, open market for the purchase of the raw material from fishermen engaged in fishing in said waters.

VI.

That certain of the defendants, and many other persons heretofore organized a trade association or organization known as "The Pacific Coast Fishermen's Union" of which the defendant H. B. Hinton is President and George Bambrick is secretary: the said H. B. Hinton is a resident and inhabitant of the State of Washington, domiciled and residing at Aberdeen in said state; the said George Bambrick is a resident and inhabitant of the State of Oregon, having his domicil at Astoria, Oregon. The defendant Leroy Chenowith is also a member of said trade organization and is a resident and inhabitant of the state of Oregon, having his domicil at Reedsport, Oregon, and is the secretary of the local branch of said trade organization located at Reedsport, which local branch is known and designated as "The Umpqua Local of the Pacific Coast Fishermen's Union".

That the defendants J. B. Brandt, Chas. J. Mackie, Glenn Murdock and Ferdinand Sandness are residents and inhabitants of the state of Oregon, having their domicils at Astoria, and said last four named, together with said George Bambrick and the said H. B. [5]Hinton are members of the governing body of said trade organization which controls its activities and actions.

The defendant P. J. Barton is a resident of the state of Oregon, having his domicil at Tillamook.

The defendant Jack Curtis is a resident and inhabitant of the State of Oregon, having his domicil at Astoria.

The defendants Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Sholtens, Roy Reavis and Arthur Hertel are residents and inhabitants of the state of Oregon and domiciled at Reedsport.

The defendants Charles Marks and Clyde Chase are residents and inhabitants of the state of Oregon, the defendant Marks having his domicil at Gardner, and the defendant Chase having his domicil at Reedsport.

That the defendants John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, John Doe No. 5, John Doe No. 6, John Doe No. 7, John Doe No. 8, John Doe No. 9, John Doe No. 10, John Doe No. 11, John Doe No. 12, Richard Roe No. 1, Richard Roe No. 2, Richard Roe No. 3, Richard Roe No. 4, Richard Roe No. 5, Richard Roe No. 6, Richard Roe No. 7, Richard Roe No. 8, Richard Roe No. 9, Richard Roe No. 10, Richard Roe No. 11, Richard Roe No. 12, Peter Roe No. 1, Peter Roe No. 2, Peter Roe No. 3, Peter Roe No. 4, Peter Roe No. 5 and Peter Roe No. 6, whose true names are unknown to the plaintiff are residents and inhabitants of the states of Oregon and Washington domiciled at various places therein, but the domicils.

of said defendants in said states are unknown to the plaintiff.

VII.

That said organization is composed of several hundred other persons who are residents and inhabitants and have their domicils in the territory of Alaska, and the states of Oregon and Washington.

[6]

A large number of said members are aliens, and under the laws of the states of Washington and Oregon are not permitted to fish within the territorial jurisdictions of said states, but said aliens conduct their fishing operations in the Pacific Ocean beyond the territorial limits of said states, and after capturing fish in said ocean bring the same to the markets in the adjacent land areas. In its membership of said trade organization are a number of fishermen conducting a fishing business in navigable bays, rivers and other streams in the states of Oregon and Washington which are tributary to the Pacific Ocean, which said fishermen own, or lease the boats they operate, and own the nets and other gear used in their operations, but each thereof operates his business according to his own desires uncontrolled by the plaintiff, or anyone else, save and except the domination and control of said trade organization hereinafter more particularly set forth.

VIII.

That the navigable waters of the Umpqua River and its tributary Smith River are one of the prin-

cipal sources of supply of shad, and said shad is available in said navigable waters for a period of approximately sixty days, part of April, May and early part of June.

That from said shad fish a valuable product known as "shad roe" is taken, which the plaintiff and other processors dispose of either in the fresh market, or by processing and canning the same, and the plaintiff now has, and for many years last past has had a large and valuable business in processing, canning, selling and disposing of canned shad, as well as canned shad roe; and in anticipation of the business in the usual course, as it had heretofore been transacted, the plaintiff has contracted to sell a large amount of said canned shad and canned shad roe, which product the plaintiff anticipated would be produced from shad captured in the navigable waters of [7] said Umpqua River and Smith River.

IX.

That under the laws of the state of Oregon the season for commercial fishing in said waters opened on April 20 and salmon, shad and other commercial fish were in said waters in commercial quantities at said time. That said waters are not only the principal source of supply of shad for the plaintiff's said operations, but also a substantial source of supply of salmon and other marine products.

X.

That in anticipation of its carrying on its business as it had heretofore done, the plaintiff leased

from the port authorities certain dock facilities and constructed thereon a cold storage plant and other facilities for the reception of, purchasing, storing and handling of said fish products, and also erected thereon net racks, tanning tanks, and adjacent thereto a mooring place for the convenience and accommodation of the fishermen selling their products to the plaintiff.

That the plaintiff also placed said operations in charge of competent men and prepared to carry on the fish dealing operations at Reedsport as it has heretofore done.

XI.

That on and immediately following April 20, 1939, a large number of fishermen began fishing in said waters and captured a substantial amount of fish and sold the same to the plaintiff at the regularly established market price, and said fishermen continued said operations until to and including Saturday, April 29, 1939, and continued to sell said fish to the plaintiff to and including said date, when the defendants, as is hereinafter more particularly set forth, caused all fishermen fishing in said waters to cease selling any fish to the plaintiff.

[8]

XII.

That prior to said date the defendants demanded of the plaintiff that it enter into a contract with said trade organization wherein and whereby the plaintiff would purchase no fish in said area from

anyone not a member of said trade organization. That all of the fishermen fishing in said waters are members of said trade organization, but the plaintiff being advised that its execution of said contract would constitute a violation of the laws of the United States of America, as well as of the State of Oregon, Declined and refused to sign the same; whereupon, the defendants H. B. Hinton, Bambrick, Brandt, Mackie, Murdock and Sandness, acting as the controlling authority of said trade organization, and by and through the defendants Barton and Curtis, through threats, intimidation and coercion induced the fishermen fishing in said waters to decline, and refuse to sell to the plaintiff any fish caught in said waters, and thereby said defendants effectively prevented the plaintiff from buying any fish caught in said waters.

That until said action of said defendants, the said plaintiff had been able to purchase and acquire its full requirements of fish from said waters from fishermen who were ready, able and willing to sell their fish to the plaintiff, and who would sell their said fish to the plaintiff except for the intimidation, coercion and threats of the said defendants.

That in carrying out their said unlawful purpose the said defendants threatened said fishermen with physical violence and with expulsion from said trade organization, and with preventing their carrying on their fishing operations by force and arms, and the destruction of their business, and that said fisher-

men dealing with plaintiff as aforesaid will be prevented from carrying on the business of fishing or marketing the same. [9]

XIII.

That at least five of said fishermen, who, during the current fishing season have been and were, up to April 29, selling their fish to the plaintiff, are using powered boats belonging to the plaintiff, leased to them by the plaintiff under the agreement that said fishermen will sell and deliver their fish caught in said areas to the plaintiff, the plaintiff agreeing to pay the full going market price for said fish. That said fishermen are without financial responsibility and the plaintiff would be unable to collect any judgment for damages which it might recover against said fishermen, and the plaintiff is without relief unless said fishermen are permitted to continue to fish and sell their products to the plaintiff at the going, market price.

That said market price for fish in said area is established by said trade organization in agreement with the various dealers, including the plaintiff, who purchase fish in said area, and as aforesaid, there was no disagreement between the plaintiff and the fishermen selling fish to the plaintiff over the price thereof, or over any other matter entering into the business between said plaintiff and said fishermen, and except for the interference by the defendants with business relations between said plaintiff and said fishermen, said fishermen would have

continued to catch fish and sell and deliver same to plaintiff.

XIV.

That the defendants through collaborating, co-operating and conspiring have entered into a plan and scheme, the purpose of which is to completely control not only the catching of all fish in the Pacific Ocean adjacent to the states of Oregon and Washington, and the territory of Alaska, and in the bays and streams tributary thereto, but also to control the marketing and price of all said fish products, and in carrying said plan and scheme into effect have persuaded, induced and in some instances coerced fishermen of [10] said states and territories to join said organization under the agreement that said members of said trade organization will not sell their fish to any dealer, or other person who does not enter into an agreement not to purchase fish from any person not a member of said trade organization.

XV.

That in carrying said plan and scheme into effect the said defendants, and other members of said organization, cooperating and conspiring with the defendants have already notified the plaintiff that unless it enters into contracts with said trade organization whereby the plaintiff will agree to purchase no fish from any person not a member of said trade organization, which contracts demanded, as aforesaid, are for areas within said states of Washington and Oregon, that the Plaintiff will not be

permitted to purchase any fish or other marine products from any member of said organization, which in effect would mean that the plaintiff would not be permitted to purchase any fish as said organization has already made contracts with practically all operating fishermen in said areas.

That the contract demanded of the defendant for said Umpqua and Smith river areas contained said provision, and the plaintiff offered, to agree to said contract provided said exclusive feature was removed therefrom, but the said trade organization declined and refused to enter into any contract which did not require the plaintiff to purchase its fish in said area exclusively from members of said organization, and, as aforesaid, is demanding similar contracts from other fishing areas in said states, and unless restrained by order of this court will effectively prevent the plaintiff from procuring its requirements from fishermen ready, able and willing to sell their products to the plaintiff except when coerced not to deal with plaintiff through the unlawful actions of said trade organization, acting by and through the defendants herein. [11]

XVI.

That unless the defendants are restrained from their unlawful interference with commerce, as herein set forth, the season for the recovery of shad, salmon and other fish will have passed for the year 1939, not only in said Umpqua and Smith river areas, but in other areas in said two states,

to the plaintiff's great and irreparable injury and damage.

That if a restraining order is granted, no damage will ensue to the defendants, nor to any fisherman, whereas if a restraining order is not granted, the plaintiff will suffer a daily damage (excluding Sundays) continuing throughout the 1939 fishing season, in the aggregate amount of \$20,000, and unless restrained by an order of this court the defendants will continue their said unlawful conduct, and cause the plaintiff to suffer said damage.

XVII.

That the defendants, and the other persons belonging to said Pacific Coast Fishermen's Union, constitute a large percentage and more than a majority of persons engaged in capturing fish in the Pacific Ocean and its tributaries, and selling the same to dealers in said states, and also produce a large percentage, and more than half of said fish captured in said ocean adjacent to said states, and a very substantial portion of the fish captured in the waters tributary to said ocean, and are seeking to gain absolute control of said industry in said area, and are also seeking to gain the complete control of and dominion over the marketing and processing of said fish, and thereby create a monopoly of said industry in said areas.

XVIII.

That as aforesaid the open, legal fishing season in said Umpqua and Smith river areas commenced

on April 20, and the fishing in other major streams flowing into said ocean commenced on May 1. That the large run of fish in said Umpqua and Smith river area is [12] now in progress, and unless the plaintiff is granted immediate relief by an injunction of this court, preventing the defendants from further continuing their unlawful conspiracy to monopolize said fishing industry that it will lose its opportunity to acquire the fish necessary to carry out its contractual obligations.

XIX.

That the defendants who are members of said trade organization are endeavoring to coerce all of the packing plants and other dealers purchasing fish from the waters of the Pacific Ocean, adjacent to said states of Oregon and Washington, into signing an agreement whereby they would agree not to purchase fish from any person not a member of said trades organization, and unless enjoined and restrained by an order of this court they will accomplish said purpose and thereby secure a complete monopoly of, and control over catching, selling, dealing in, and processing of fish, and other marine products taken from the Pacific Ocean and its tributaries in and adjacent to said states.

Wherefore, the Plaintiff prays:

(1) That a temporary restraining order and preliminary injunction may be issued out of this court upon its order directing the defendants, and each of them, and their agents, servants and employees, from in any manner interfering with the plaintiff

in the purchase, acquisition, processing, control and disposal of fish and other marine products, and that after a trial of this cause that said injunction may be made perpetual;

(2) For a decree of this court that the contracts between said Pacific Coast Fishermen's Union, and its members, which tend to create a monopoly of the fishing industry in the states of Oregon and Washington, and Alaska are void, and that all contracts entered into between said Pacific Coast Fishermen's Union, and its members, whereby processors and dealers in said marine products have agreed not to purchase fish and other marine products from persons not members of said [13] organization are void;

(3) For a decree ascertaining the damages suffered by plaintiff by reason of the unlawful acts of the defendants herein complained of, and awarding judgment in favor of the plaintiff and against the defendants, and each of them, for thrice the amount of said damages;

(4) And for such other and further order as to the court may seem meet and equitable in the premises.

JAY BOWERMAN

Attorney for Plaintiff

[Verification.]

[Endorsed]: Filed May 4, 1939. [14]

And afterwards, to wit, on the 22nd day of May, 1939, there was duly filed in said Court, an Answer in words and figures as follows, to wit: [15]

[Title of District Court and Cause.]

ANSWER

Comes now defendants H. B. Hinton, George Bambriek, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholten, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Philips, Carl Pyrtz, W. A. Pyrtz, [16] Andy Toppi, Charles Pilton, and Pacific Coast Fishermen's Union, its officers and members, and for their answer to Plaintiff's complaint, admit, deny and allege as follows:

I.

Admit the allegations contained in Paragraph I of said complaint.

II.

Defendants deny Paragraph II of said complaint except to admit Plaintiff's purchase of fish and other products of the Pacific Ocean and its tributaries from various persons engaged in capturing such products and that there are a number of other established purchasers such as plaintiff who obtain various products from said fishermen.

III.

Defendants admit Paragraph III of said complaint except that defendants deny that plaintiff is thereby engaged in commerce between the several states and territories of the United States.

IV.

Defendants admit Paragraph IV of said complaint.

V.

Answering Paragraph V of said complaint defendants do not have sufficient information with respect thereto to form a belief and therefore deny the same.

VI.

Defendants admit Paragraph VI of said Complaint.

VII.

Answering Paragraph VII of said complaint, defendants admit that said organization is composed of several hundred other persons who are residents and inhabitants and have their domicils in the Territory of Alaska and the States [17] of Oregon and Washington, and that some of said persons own or lease the boats they operate, and own or lease certain gear used in their operations, but defendants deny each and every other allegation contained in said paragraph and allege that many of such persons engaged in fishing do not own any boats or gear and that many of said persons operate

boats and gear either owned directly or indirectly by plaintiff, and that plaintiff exercises control over such equipment.

VIII.

Answering Paragraph VIII of said complaint defendants do not have sufficient information to form a belief with respect thereto and therefore deny the same.

IX.

Defendants admit Paragraphs IX and X of said complaint.

X.

Defendants deny all the allegations contained in Paragraphs XI and XII of said complaint.

XI.

Answering Paragraphs XIII of said complaint, defendants admit that at least five of said fishermen during the current fishing season have been and were selling their fish to plaintiff, or using powered boats belonging to plaintiff, but defendants deny each and every other allegation contained in said complaint.

XII.

Defendants deny all of the allegations contained in Paragraphs XIV, XV, XVI, XVII, XVIII and XIX of said complaint, and particularly deny that plaintiff will suffer daily damage in the sum of \$20,000 or any other sum.

And for their first further and separate answer [18] and defense defendants allege:

That each of defendants named in the within named cause except Charles Marks and Clyde Chase are members of the Pacific Coast Fishermen's Union; that the said Pacific Coast Fishermen's Union, hereinafter referred to as the PCFU, is a labor union chartered by the International Fishermen and Allied Workers of America; that said International Fishermen and Allied Workers of America is a labor organization exercising jurisdiction over its members engaged in the fishing and allied industry throughout America, and is affiliated with the Congress for Industrial Organizations; that the PCFU maintains its general headquarters at Astoria, Oregon, and charters numerous organizations of laboring people engaged in fishing and allied trades along the Pacific Coast; that these various local unions so chartered are composed of persons engaged in capturing fish in the Pacific Ocean and in the streams emptying into said Pacific Ocean, except the Columbia River; that said local unions so chartered maintain offices in various cities and towns of Oregon, and particularly in Astoria, Reedsport, Westport, Depoe Bay, Coquille, Tillamook and others.

II.

That a majority of all persons engaged in catching fish in the Pacific Ocean off the State of Oregon and in the various Oregon streams, except the Columbia River, are members of the PCFU and have bargained collectively through the PCFU with plaintiff for a number of years past; that some of

the persons engaged in taking fish as aforesaid, own their own boats and other equipment, a large number of persons so engaged are furnished equipment by [19] plaintiff through contract or mortgage arrangements which require them to deliver their catch to plaintiff.

III.

That about one-third of the persons engaged in fishing within said area do not own any equipment whatsoever and have nothing to offer except their labor, and are paid upon a "lay" basis or by receiving a fixed percentage of the catch.

IV.

That the PCFU was organized in the year 1932 A. D., and has ever since that time functioned as the collective bargaining agency for those engaged in catching fish within said area; that during said period the PCFU has entered into contractual relationship with plaintiff and other packers covering compensation and conditions under which the members of the PCFU shall labor; one of said terms of such contracts provides in substance that the members of the PCFU shall not be required to work with or alongside of non-union fishermen; that the Constitution and By-laws of the PCFU provide in substance that the PCFU shall seek to establish contracts in behalf of its members with the buyers and packers, and further provides that the members of the PCFU shall not sell their products outside of these contracts.

V.

That the nature of the fishing industry is such that it is necessary for the protection of persons engaged in the fishing industry, and necessary in the interest of the preservation of food fish that contractual relationships be established prior to the taking of fish and other marine products due to the fact that the measure of the fishermen's compensation for their labor depends upon the price obtain- [20] able, and due, further, to the fact that it is unlawful within the limits of the State of Oregon to waste salmon or other food fish.

VI.

That at the time when said contracts are negotiated and entered into, the subject matter of the contract, "food fish", has not been reduced to the status of property in that such contracts are made prior to the catching of said marine products and while said products belong to the State insofar as they can be property of anyone; that the catching and delivering of fish and other marine products mentioned in plaintiff's complaint is purely a local function in which all transactions occur within the boundaries of a particular state, and that defendants are not now nor have they been engaged in any interstate or foreign commerce in connection with their fishing operations.

VII.

That during the month of April 1939 the PCFU had entered into negotiations with plaintiff for the

purposes of reaching an agreement with respect to the compensation and working conditions under which the members of the PCFU should labor during the forthcoming season; that such negotiations were not fruitful in that no agreement was reached between plaintiff and the PCFU with respect to the conditions under which the fishermen, members of the PCFU, should be required to labor.

VIII.

That at no time during the time mentioned in plaintiff's complaint have the defendants nor other members of the PCFU, or its officers, threatened, coerced nor intimidated any person whatsoever engaged in the fishing industry [21] try within the area described in plaintiff's complaint or elsewhere, and have committed no unlawful acts complained of in plaintiff's complaint.

IX.

That the within named cause involves a labor dispute; that the persons of the union against whom relief is sought, is engaged in the same industry, trade, craft and occupation in which such dispute occurs, and have a direct interest therein; that a number of the defendants are officers and agents of the PCFU, having a direct interest in said industry.

X.

That the defendants are organized in conformity with the United States Statute providing for the

organization of fishermen and are organized for the purpose of collective bargaining as contemplated by the statute, "United States Code Annotated, Title 15, p. 521 and 522; that plaintiff has a full and complete remedy at law under said statute, if indeed it is entitled to any remedy.

XI.

That plaintiff and other packers and dealers of fish and other marine products have been and now are organized into an association called The Commercial Fisheries Association; the names of the companies and individuals who are members of this association among others are as follows:

Columbia River Packers Assn.

New England Fish Co.

Point Adams Packing Co.

Nehalem Bay Fish Co.

Sunset Fish Co.

Tillamook Bay Fish Co.

Gage Fish Co.

Newmans Market

H. Jones Fish Co.

Art Ramsay

L. Hespeck

Yaquina Bay Fish Co.

E. J. Oakland

Chas. Marks

Justom & Peterson

Chas. Feller [22]

that Chas. Feller is the president of said organization and one of the dealer members thereof; that said commercial Fisheries Association has throughout its existence bargained with the Pacific Coast Fishermen's Union, and has been and now is the collective bargaining agency for the packers and dealers; that the plaintiff, Columbia River Packers Association, is the largest operator in the field and seeks to impose its demands upon the members of the Pacific Coast Fishermen's Union without meeting the ordinary terms growing out of collective bargaining.

XII.

That during all times mentioned in plaintiff's complaint the members of the PCFU have continued to carry out their labor in the catching of fish and other marine products and delivering the same to persons with whom it has contractual relationships; that the members of the PCFU are ready and willing to bargain and to catch and deliver fish to plaintiff upon precisely the same terms that they are now catching and delivering fish and other marine products to the competitors of plaintiff.

XIII.

That on numerous occasions since April 20, 1939 plaintiff has intimidated, coerced and attempted to force a number of the defendants and other members of the PCFU by threats of discharge and threats of litigation to deliver fish and other marine

products to plaintiff upon terms and conditions more favorable to plaintiff than to its competitors; that during said time plaintiff had threatened said defendants that plaintiff would take away the fishing outfits from them unless they caught and delivered their fish to plaintiff. [23]

XIV.

That the PCFU keeps its charter open and will admit to its membership any and all persons engaged in the catching of fish and other marine products so long as such persons are of good moral character and bona fide workmen; that the PCFU does not intimidate or coerce any of its members in any respect but permits them to withdraw from said organization at their pleasure so that they may bargain individually or collectively with such other group as they may deem to be their best interest.

And for a second further and separate answer and defense defendants plead as follows:

I.

That the Court does not have jurisdiction to grant the injunctive relief prayed for in plaintiff's complaint.

II.

That plaintiff's complaint fails to state a claim upon which the relief is prayed for in sub-paragraph (3) of plaintiff's prayer.

Wherefore defendants, having fully answered plaintiff's complaint, pray for a decree of the above named Court as follows:

- (1) That the temporary restraining order heretofore issued by the above named Court be dissolved.
- (2) That plaintiff's complaint be dismissed with prejudice.
- (3) That defendants be recompensed for the loss, expense, and damage, including all reasonable costs together with the reasonable attorney's fee and expenses incurred in the defense against the granting of the injunctive relief sought in this proceeding. [24]
- (4) And for such other and further relief as may to the Court seem equitable in the premises.

BEN ANDERSON

Attorney for Defendants

[Verification.] [25]

Due and legal service of the foregoing, and the receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, on this 22nd day of May, 1939.

JAY BOWERMAN (JHH)

Of Attorneys for Plaintiff

[Endorsed]: Filed May 22, 1939. [26]

And afterwards, to wit, on the 22nd day of May, 1939, there was duly filed in said Court, an Answer of Charles Marks and Clyde Chase, in words and figures as follows, to wit: [27]

[Title of District Court and Cause.]

ANSWER OF CHARLES MARKS AND CLYDE CHASE

Comes now defendants Chas. Marks and Clyde Chase, and for their answer to plaintiff's complaint, admit, deny and allege as follows:

I.

Admit the allegations contained in Paragraph I of said complaint. [28]

II.

Defendants deny Paragraph II of said complaint except to admit Plaintiff's purchase of fish and other products of the Pacific Ocean and its tributaries from various persons engaged in capturing such products and that there are a number of other established purchasers such as plaintiff who obtain various products from said fishermen.

III.

Defendants admit Paragraph III of said complaint except that defendants deny that plaintiff is thereby engaged in commerce between the several states and territories of the United States.

IV.

Defendants admit Paragraph IV of said complaint.

V.

Answering Paragraph V of said complaint defendants do not have sufficient information with

respect thereto to form a belief and therefore deny the same.

VI.

Defendants admit Paragraph VI of said complaint.

VII.

Answering Paragraph VII of said complaint, defendants admit that said organization is composed of several hundred other persons who are residents and inhabitants and have heir domicils in the Territory of Alaska and the States of Oregon and Washington, and that some of said persons own or lease the boats they operate, and own or lease certain gear used in their operations, but defendants deny each and every other allegation contained in said paragraph and allege that many of such persons engaged in fishing do not own any boats or gear and that many of said persons operate boats and gear either owned directly or indirectly by plain- [29] tiff, and that plaintiff exercises control over such equipment.

VII.

Answering paragraph VIII of said complaint defendants do not have sufficient information with respect thereto to form a belief and therefore deny the same.

IX.

Defendants admit Paragraphs IX and X of said complaint.

X.

Defendants deny all the allegations contained in Paragraphs XI and XII of said complaint.

XI.

Answering Paragraph XIII of said complaint, defendants admit that at least five of said fishermen during the current fishing season have been and were selling their fish to plaintiff, or using powered boats belonging to plaintiff, but defendants deny each and every other allegation contained in said complaint.

XII.

Defendants deny all of the allegations contained in Paragraphs XIV, XV, XVI, XVII, XVIII, and XIX of said complaint, and particularly deny that plaintiff will suffer daily damage in the sum of \$20,000 or any other sum.

And for a first further and separate answer and defense defendants plead as follows:

I.

That defendants, Charles Marks and Clyde Chase, at all times mentioned in plaintiff's complaint, and for some years past, have purchased marine products taken in the Umpqua River and the surrounding district; and that each of [30] said defendants own and operate receiving and processing plants at the mouth of the Umpqua River at Gardner and Reedsport respectively.

II.

That these answering defendants own and operate their separate fleets of fishing boats through an arrangement whereby members of the PCFU lease boats from these answering defendants and turn in their catch of marine products to defendants; that it has been the custom of the trade for many years past that where the buyer or processor furnishing boats as aforesaid, it is tacitly understood that such fishermen shall deliver their catch to the buyer or processor owning the boats.

III.

That defendants Chas. Marks and Clyde Chase operate independently of each other—that is, Chas. Marks conducting his operation at Gardner, Oregon, on the north side of the Umpqua River, and Clyde Chase conducting his operation at Reedsport, Oregon, on the south side of the Umpqua River.

IV.

That each of these answering defendants has signed certain documents with the PCFU providing that the members of the PCFU shall deliver fish and other marine products to these defendants; said document providing further that the members of the PCFU shall not be required to work with or alongside of non-union members; said document further providing that in the event a court of competent jurisdiction should declare such a provision unlawful that the contract shall be void; that

the above described document has been signed by these defendants in separate documents embracing the separate operations; said documents also having been [31] signed by PCFU, but that these answering defendants do not have copies of said documents, and in view of the ordinary custom in the trade, these defendants do not know whether or not such contract is in force at the present time.

V.

That defendant Chas. Marks has been engaged in fishing and allied industry in the southwestern part of Oregon for a period of approximately fifty (50) years; that prior to the year 1934 A. D., there existed but little regulation of the fish industry in the above described area and in the geographical area embraced in plaintiff's complaint; that due to the lack of regulatory measures great waste of natural resources were incurred and frequent periods of depressed markets were experienced. These chaotic conditions resulting time and time again in losses, not only to those engaged in capturing fish, but also severe losses to those engaged in buying and processing these products.

VI.

That in the interest of the preservation of food fish it is necessary that fish boats, particularly those taking fish in the Pacific Ocean, be provided with ice and supplies prior to setting out to sea; that these defendants' facilities for servicing are limited so that it is impossible to guarantee to service and

ice any and every boat seeking such service; it is therefore necessary that these defendants limit their buying to the buying from individuals who are known to these defendants to be reliable, and to service such boats to the exclusion of others.

VII.

That it is to the best interest of those engaged in capturing of fish, those engaged in buying and processing [32] of fish, and to the public that the taking and processing of fish in the Pacific Ocean and its tributaries be regulated in a reasonable degree.

VIII.

These answering defendants allege that they have at no time coerced, intimidated or threatened any person whatsoever engaged in the fishing industry within the area described in plaintiff's complaint or elsewhere, and have committed no unlawful acts complained of in Plaintiff's complaint.

And for a second further and separate answer and defense these defendants plead as follows:

I.

That the Court does not have jurisdiction to grant the injunctive relief prayed for in plaintiff's complaint.

II.

That plaintiff's complaint fails to state a claim upon which the relief prayed for in sub-paragraph (3) of plaintiff's prayer could be granted.

Wherefore defendants having fully answered plaintiff's complaint, pray for a decree of the above named Court as follows:

- (1) That the temporary restraining order heretofore issued by the above named Court be dissolved.
- (2) That plaintiff's complaint be dismissed with prejudice.
- (3) That these answering defendants be compensated for the loss, expense, and damage, including all reasonable costs together with the reasonable attorney's fee and expenses incurred in the defense against the granting of the injunctive relief sought in this proceeding. [33]
- (4) And for such other and further relief as may to the Court seem equitable in the premises.

BEN ANDERSON

Attorney for Defendants

[Verification.]

Due and legal service of the foregoing, and the receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon on this 22nd day of May, 1939.

JAY BOWERMAN

Attorney for Plaintiff

[Endorsed]: Filed May 22, 1939. [34]

And afterwards, to wit, on Monday, the 22nd day of May, 1939, the same being the 67th Judicial day of the Regular March, 1939 Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [35]

[Title of District Court and Cause.]

ORDER

Based on the motion of the plaintiff for leave to amend its bill of complaint by interlineation on the original complaint,

It is considered, ordered and decreed that said motion be, and the same is hereby allowed, and that said complaint be, and the same is hereby amended by interlineation as follows:

By adding a "," and the word "California" after the word "Washington" in line 24, page 2; and by adding a "," and the word "California" after the word "Oregon" in line 8, page 3.

By adding the words "and foreign" after the word "interstate" in line 3, page 4.

By adding the letter "s" to the word "state", and a "," and the word "California" after the word "Oregon" in the last line on page 5.

By adding an "s" to the word "state" in line 5, and substituting the letter "h" for the letter "y" in the last word in the last line of paragraph VII at its ending on page 6.

By inserting a "," after the surname "Mackie" in line 11, page 8.

By striking out of line 25, page 8, the words "physical violence" and inserting in lieu thereof "fines and penalties"; and striking out in line 27 the words "by force and arms"; and by adding in line 29 after the word "aforesaid" the words "were and"; and by correcting the spelling of the word "marketing" in line 30 by striking out the letter "n". [36]

By adding in line 4, page 9, after the word "boats" the word "heretofore" and by striking out of line 5, page 9, the word "leased" and inserting therein the word "sold".

By inserting in line 4, page 10, after the word "fish" the words "or other marine products".

By striking out the word "with" in line 11, page 10, and inserting in lieu thereof the word "will"; and by inserting after the word "fish" in said line the words "or other marine products"; and by inserting in line 17, page 10, after the word "fish", the words "or other marine products".

By removing the word "is" where it first appears in line 8, page 11, and substituting in lieu thereof the word "if".

Dated May 22, 1939.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed May 22, 1939. [37]

And afterwards, to wit, on the 26th day of May, 1939, there was duly filed in said Court, a Memorandum Opinion, in words and figures as follows, to wit: [38]

[Title of District Court and Cause.]

MEMORANDUM OPINION

This is a proceeding under the Federal Anti-Trust Laws, which give an aggrieved private party the right to enjoin monopolistic practices. Treble damages are also claimed.

At this time I can only give a brief summary of the facts and the contentions of the parties.

Plaintiff has (or has had recently) receiving, packing, canning and processing plants and equipment, including floating equipment, in Oregon, Washington, California and Alaska. Plaintiff does no fishing itself. It cans and processes 60% of the pack of salmon and other marine products put up in Oregon. Since the appearance of albacore (tuna) off the Oregon Coast in recent years, plaintiff has prepared to pack that fish in commercial quantities. To that end, it has expended a large sum for additional plant and equipment at Astoria.

The defendant Union is an affiliate of the Congress of Industrial Organization. Its membership includes 90% of the commercial troll fishermen, fishing off shore in Oregon and Washington. The Union has a large additional membership among fishermen who fish in the rivers and bays of Oregon.

and Washington, not including, however, the Columbia River. Union counsel stated at the argument that the defendant did not now claim jurisdiction over California and Alaska waters, but the evidence showed that quite recently defendant had asserted jurisdiction over fishermen in California and Alaska. [39]

This controversy is over the requirement which defendant imposes on all packers and canners contracting with it, that those contracting will not buy fish from any one not a member of the defendant Union. The Union's constitution and by-laws obligate Union members not to sell fish to packers or canners not under contract with the Union. I believe the record indicates that all the packers and canners in Oregon, other than plaintiff, are under contract with defendant. I recall no exception.

Towards the end of the fishing season of 1938, certain fishermen, residents of the State of Washington, not members of the defendant Union, offered to sell their fish to plaintiff. Plaintiff's officials informed the Washington fishermen that plaintiff could not buy from them because of the said "exclusive clause" in the contract which plaintiff then had with the defendant Union, whereupon the Washington fishermen threatened plaintiff with criminal prosecution and civil suits under the Federal Anti-Trust Laws. Feeling that it had no alternative, plaintiff has begun this proceeding to have

determined the legality of the exclusive buying clause in defendant's contracts and the allied provisions in the Union's constitution and the practices based thereon.

Before beginning this suit, plaintiff offered to negotiate with defendant, in accordance with past practice, for a price to be paid on the season's catch, but refused to sign a contract containing the exclusive buying clause. Thereupon, defendant's members were notified by those in authority not to sell fish to plaintiff, and this litigation followed. Plaintiff cannot obtain the fish it needs to supply its customers, who are distributed throughout the United States and elsewhere, if it is limited to the catch of fishermen not members of defendant Union. Defendant charges that plaintiff's motive is to destroy the Union, particularly that plaintiff is seeking to obtain this season's and later catches of the recently discovered run of albacore off the Oregon coast at a lower price than it would have to [40] pay if under contract with defendant.

Norris-La Guardia Act

Defendant claims that this is a labor dispute, and that the terms of the Norris-La Guardia Act, which prohibits injunctions in labor disputes (except in cases involving fraud and violence) should apply. No fraud or violence is charged by plaintiff.

Plaintiff contends that the relation of employer-employee does not obtain between it and defendant's members, and for that reason denies the

application of the Norris-La Guardia Act. Plaintiff claims that defendant's members are free to fish as and when they please, and that it has no control over defendant's members or their operations in any of the usual respects which characterize the relation of employer and employee. Plaintiff's complaint characterizes the fishermen as "independent contractors". At the trial, plaintiff suggested that it was more apt to describe the fishermen as "merchants", a characterization used by Judge H. K. Zimmerman of the Oregon State Circuit Court in a case heard by him several years ago. The Union's brief refers to the Union as a "trade association".

Defendant Union relies also on the provisions of the Act of Congress of 1934, 15 U. S. C. A. #521, authorizing fishermen to market collectively. This Act contains a provision that the Secretary of Agriculture may order such collective organizations of fishermen to cease and desist any operations which, in the opinion of the Secretary, unduly restrain trade. The Act provides for injunctive proceedings by the Department of Justice, in the event that such orders by the Secretary are not observed. Defendant urges that this procedure is exclusive in any case where a monopolistic practice has sprung up.

Defendant also denies that the case presented involves interstate commerce. [41]

Opinion

I cannot feel that this is a labor dispute within the meaning of the Norris-La Guardia Act. Defendant calls attention to (a) of Section 13 of the Act, reading as follows:

“(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein,”

But (c) of the same Section must also be considered. It reads:

“(c) The term “labor dispute” includes any controversy concerning *terms or conditions of employment*, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange *terms or conditions of employment*, regardless of whether or not the disputants stand in the proximate relation of employer and employee.” (Italics are by the Court).

In my opinion ‘terms and conditions of employment’ within the meaning of the Act are not involved in this controversy.

Plaintiff refers to defendant as a “trade association”. I think defendant has more aptly described itself (in invoking the benefits of the Federal Fishermen’s Collective Market Act) as a cooperative association, and I think we are compelled to look to the law of cooperative marketing rather

than to labor law for the precedents controlling this case.

Defendant's members are producers, just as cattlemen, grain men, poultry raisers and orchardists, are producers. Could it be maintained that a cooperative association of any of the types of producers named, having substantial control of production, could require of all buyers that they agree not to buy from any other producers, and could forbid and prevent their members by fines and other disciplinary measures from selling to buyers who did not thus agree to buy only from cooperative members? Research by counsel during the week's trial and my own research has not disclosed so extreme a claim by any cooperative marketing association in the long history of cooperatives.

While the point was not pressed at the argument, I ask this question in behalf of the consuming public, whose interests are paramount in determining any question arising under the Anti-Trust Laws: In any year when defendant's members did not choose to fish, how would [42] the consuming public get its needs of salmon and other marine products? Since the Union's contract does not guarantee a supply of fish, where would the canneries get fish, having agreed to look to the Union for their sole supply? Surely reasonable men will agree that the public's interest in an important item of food supply should not be put in such jeopardy. If an exclusive and monopolistic arrangement can be legally made as to fish, it can be made as to milk, as to meat, as to all other necessities of life.

Defendant likens its claim to the closed shop in industry, but I cannot concede the analogy. The special and peculiar economic problems growing out of the relation of employer and employee in industry, which have caused sanction to be given by modern decisions and legislation to the closed shop in industry, where the true employer and employee relation obtains do not, in my opinion, furnish precedent for a monopoly in the capture and distribution of one of Nature's resources, the common bounty of all men.

Interstate Commerce

Plaintiff distributes its products widely throughout the United States, and since defendants' acts are directly intended, and will, if carried out, have the effect of denying plaintiff the needed raw material to carry on its business, I entertain no doubt that the Federal Anti-Trust Laws apply. The movements of fish to plaintiff's canneries, across State Lines and from territorial and international waters strengthen the conviction that here is a proper case for invocation of the Federal statutes.

The exclusive buying clause, which if accepted, would forbid plaintiff from buying fish from others than members of the defendant Union, and which would forbid Union members from selling to others than those so contracting with the Union is, in my opinion, clearly in-restraint of trade and void as against public policy, and plaintiff is entitled to injunctive relief.

I will be glad to meet with the attorneys at an early convenient date to discuss Findings of Fact, Conclusions of Law, and appropriate form of Decree. It may well be that the Decree should, as to certain matters, be declaratory in form. If this is found [43] advisable, the necessary amendments may be made to the pleadings.

Time permitting, I will endeavor at a later date to enlarge this memorandum with citation of authorities and a fuller statement of the position of the parties and of the facts disclosed by the testimony. The temporary restraining order will be extended to and including Saturday, June 3rd, next, pending final settlement of the form of the Decree.

I desire to express my appreciation of the candor and reasonableness with which the case has been presented on both sides, and to say also that I deeply sympathize with the earnestness and zeal manifested by the leaders of the defendant Union for better prices for the fish caught by their members, as well as their great interest in conserving the food supply with which they deal.

Having organized the fishermen 90%, the defendant Union has a great power in its hands. Such great control over one of the necessities of life calls for reasonableness and moderation in the exercise of the power. I am certain that with so complete an organization, the fishermen will find that the powers granted by the Federal cooperative statutes are ample to protect their markets. More power

over their markets than exercised by the other producers of the Nation in the fields of agriculture, horticulture and meat production, the fishermen cannot expect and should not demand.

CLAUDE McCOLLOCH

Judge

Dated May 26, 1939.

[Endorsed]: Filed May 26, 1939. [44]

And afterwards, to wit, on the 9th day of June, 1939, there was duly filed in said Court, a Motion to amend Complaint to conform to the Evidence, in words and figures as follows, to wit: [45]

[Title of District Court and Cause.]

MOTION

Comes now the plaintiff and moves the court for an order authorizing and permitting plaintiff to amend its complaint herein to conform to the evidence heretofore introduced in this cause without objection, as follows:

I.

By adding at the end of paragraph XVI of plaintiff's complaint:

"That on and between April 29, 1939, and May 24, 1939, both dates inclusive, due to the interference by the defendant, the Pacific Coast Fishermen's Union, and the defendants Bambrick, Brandt, Mackie, Murdock, Sandness, Barton, Curtis, Leroy

Chenowith, Walter Weaver, Charles Marks and Clyde Chase, the fishermen fishing in the Umpqua and Smith Rivers, who theretofore had been delivering fish to plaintiff, and who would have continued to deliver fish to plaintiff, except for the unlawful interference by said defendants, refrained from making such deliveries, and that the plaintiff has suffered damages in the sum of Eleven Hundred Dollars (\$1100.00) by reason of said unlawful acts of said defendants."

II.

By adding to said complaint a paragraph numbered XXI as follows:

"That on and after the commencement of this suit on May [46] 4, 1939, and after the temporary restraining order issued by this court had been served, certain of the defendants fishing in said area sold fish to the plaintiff, and that said organization, and the above designated members thereof, to wit: Bambrick, Brandt, Maekie, Murdock, Sandness, Barton, Curtis, Chenowith and Weaver have, since said sales were made, threatened, and now threaten unless restrained by decree of this court, to inflict penalties on said fishermen who are members of said organization, and who have during the pendency of this suit sold fish to the plaintiff; and that in open court on Saturday, June 3, 1939, Ben Anderson, the attorney for all of the defendants appearing herein, stated in open court that it was the intention of said defendants to discipline all such fishermen as had sold fish to the plaintiff."

III.

By adding to said complaint a paragraph numbered XXI as follows:

"After the commencement of this suit and the service of the complaint, summons and restraining order upon the defendants Glenn Murdock and Jack Curtis, they, together with two other officials of the defendant Pacific Coast Fishermen's Union, for the purpose of coercing and compelling plaintiff to enter into a contract with the defendant Pacific Coast Fishermen's Union and its members containing the exclusive provisions hereinabove referred to, said defendants Glenn Murdock and Jack Curtis, together with said two other officials of the defendant Pacific Coast Fishermen's Union, [solicited and]* procured an agreement with other organizations and individuals theretofore having business relations with the plaintiff, and with whom the plaintiff intended and desired to continue business relations, and said defendants and said other officials [solicited and]* procured said other persons and organizations to agree that unless and until the plaintiff entered into an agreement with the defendant Pacific Coast Fishermen's Union, satisfactory to the defendant Pacific Coast Fisher- [47] men's Union, that they, the said other persons and organizations would boycott the plaintiff and refuse to have any business dealings with the plaintiff, it being the intention of said

*[Stricken by Order, June 14, 1939—see p. 53.]

defendants Glenn Murdock and Jack Curtis and said other officials of the defendant Pacific Coast Fishermen's Union thereby to coerce and compel the plaintiff to enter into a contract with the defendant Pacific Coast Fishermen's Union containing said exclusive provisions whereby the plaintiff would be obligated to refrain from purchasing fish from any person not a member of said defendant Pacific Coast Fishermen's Union; and that said defendants and said other officials did procure said other persons and organizations to agree that unless and until a contract was entered into by the plaintiff to and with the defendant Pacific Coast Fishermen's Union, that the said other persons and organizations would refrain from having business relations with the plaintiff, and the defendant Pacific Coast Fishermen's Union then continued as it had theretofore done to insist that any contract between the plaintiff and the defendant Pacific Coast Fishermen's Union should contain said provisions excluding the plaintiff from purchasing fish from anyone not a member of the defendant Pacific Coast Fishermen's Union."

JAY BOWERMAN

C. W. PECORE

Attorneys for Plaintiff

State of Oregon,

County of Multnomah—ss.

Due service of the within Motion by the delivery of a duly certified copy thereof as provided by

law, at Portland Oregon, on this 9th day of June, 1939, is hereby admitted.

BEN ANDERSON

Of Attorneys for Defendants

[Endorsed]: Filed June 9, 1939. [48]

And afterwards, to wit, on Monday, the 12th day of June, 1939, the same being the 83rd Judicial day of the Regular March, 1939 Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [49]

[Title of District Court and Cause.]

ORDER

Based upon the motion of Jay Bowerman and C. W. Pecore, Attorneys for Plaintiff, made in open court this 12th day of June, 1939, for an order dismissing this cause as to the defendants John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, John Doe No. 5, John Doe No. 6, John Doe No. 7, John Doe No. 8, John Doe No. 9, John Doe No. 10, John Doe No. 11, John Doe No. 12, Richard Roe No. 1, Richard Roe No. 2, Richard Roe No. 3, Richard Roe No. 4, Richard Roe No. 5, Richard Roe No. 6, Richard Roe No. 7, Richard Roe No. 8, Richard Roe No. 9, Richard Roe No. 10, Richard Roe No. 11, Richard Roe No. 12, Peter Roe No. 1, Peter Roe No. 2, Peter Roe No. 3, Peter Roe No. 4,

Peter Roe No. 5, Peter Roe No. 6, and it appearing to the Court from statements of counsel and from the records and files herein that none of said defendants have ever been served with Process in this Cause, and that neither the identity nor domicile of any of said defendants has been determined;

Now, therefore, it is ordered, adjudged and decreed that this Cause be and is hereby dismissed as to the defendants John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, John Doe No. 5, John Doe No. 6, John Doe No. 7, John Doe No. 8, John Doe No. 9, John Doe No. 10, John Doe No. 11, John Doe No. 12, Richard Roe No. 1, Richard Roe No. 2, Richard Roe No. 3, Richard Roe No. 4, Richard Roe No. 5, Richard Roe No. 6, Richard Roe No. 7, Richard Roe No. 8, Richard Roe No. 9, Richard Roe No. 10, Richard Roe No. 11, Richard [50] Roe No. 12, Peter Roe No. 1, Peter Roe No. 2, Peter Roe No. 3, Peter Roe No. 4, Peter Roe No. 5, Peter Roe No. 6.

Dated June 12th, 1939.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed June 12, 1939. [51]

And afterwards, to wit, on Wednesday, the 14th day of June, 1939, the same being the 85th Judicial day of the Regular March, 1939 Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [52]

[Title of District Court and Cause.]

ORDER

This cause coming on in open court this 14th day of June, 1939, on motion of plaintiff for leave to amend its complaint to conform to the evidence, oral argument having been heard, and the court now being fully advised:

It is considered and ordered that paragraph I of said motion pertaining to amendment at the end of paragraph XVI of the complaint be and the same is allowed.

That paragraph II of the motion pertaining to adding a paragraph numbered XXI is allowed.

That paragraph III of the motion is allowed except as follows: strike out the words, "solicited and" appearing in line 25 on page 2 of the motion, and strike out the words, "solicited and" appearing in line 29 on the said page.

CLAUDE McCOLLOCH
Judge

[Endorsed]: Filed June 14, 1939. [53]

And afterwards, to wit, on the 14th day of June, 1939, there was duly filed in said Court, Findings of Fact and Conclusions of Law, in words and figures as follows, to wit: [54]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having heretofore come on regularly for trial before the Honorable Claude McColloch, a Judge of the above entitled Court, the plaintiff appeared by Jay Bowerman and C. W. Pecore, its attorneys; the defendants H. B. Hinton, George Bambrick, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Kuggler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, and Pacific Coast Fishermen's Union, its officers and members, Clyde Chase and Charles Marks, appeared by Ben Anderson, their Attorney; the Court having received and considered the evidence and heard the argument of counsel, and being fully [55] advised, makes the following

FINDINGS OF FACT

I.

That the plaintiff is a corporation duly and legally organized, incorporated, and doing business under

and by virtue of the laws of the State of Oregon, having its principal office and place of business at Astoria, in said state, and under the authority of its articles of incorporation, charter and by-laws is engaged in purchasing, processing, canning, merchandising and distributing fish and other products of the Pacific Ocean and its tributaries, and in said connection acquires, transports, processes, cans, sells, disposes of, and distributes marine products caught and acquired from the Pacific Ocean and its tributaries in the markets of the United States and the states thereof, and in various foreign countries including England, Australia, Germany and other countries.

II.

That in carrying on its said business it purchases fish and other products of the Pacific Ocean and its tributaries from various and sundry producers and independent contractors, who capture, and acquire the same, and transport the same within and without the State of Oregon, and dispose of the same to the plaintiff.

That said producers and independent contractors are fishermen, and in the operation of their several businesses of fishing for the purpose of capturing and acquiring fish and other marine products own, or under leases control boats, nets, and other fishing gear and appliances severally, and individually, of a value ranging from \$100.00 to \$15,000, and said individual fishermen not only own, or un-

der lease control their fishing equipment, but to a substantial extent employ the labor of others to assist them in carrying on their fishing operations.

Said fishermen are directly employed by no one, but are producers and independent contractors, who fish when and where they choose, and dispose of their fish to whomsoever they select, limited only by a voluntary agreement among themselves as members of the defendant, the Pacific Coast Fishermen's Union. [56]

That in each area of the states of Oregon, Washington, California and the territory of Alaska, adjacent to which fish and other marine products of the Pacific Ocean and its tributaries are captured there is an established market price for the various products, and there are a number of established purchasers, such as the plaintiff, who purchase from said fishermen, and other fishermen, their various products, paying therefor the established market price.

III.

That in carrying on its said business, it has been and is the practice of the plaintiff, along with other dealers to purchase fish and other products of the Pacific Ocean and its tributaries, which have been caught, captured and reduced to possession and ownership by various and sundry persons, all of which fish, and other marine products, have been caught, captured and reduced to possession and ownership by fishermen either on the Pacific Ocean within and without the territorial jurisdiction of

the States of Oregon, California and Washington, and/or upon navigable streams thereof, which said fish and other marine products have been transported from the point of capture to land docks, wharves and other receiving instrumentalities, or in the vicinity of land for sale and delivery to the plaintiff and other dealers and processors, and thereby the plaintiff has been engaged in commerce between the several states and territories of the United States.

IV...

That in transacting its business, the plaintiff owns and operates two large ocean-going steamships, and a large number of smaller ocean-going tenders, and other marine facilities, and also operates two plants, factories and processing institutions in said territory of Alaska, and two each in the states of Oregon and Washington, at which it purchases, processes, cans and places in condition for sale and distribution its products in the various states and territories of the United States; and plaintiff also has receiving stations in the states of Oregon and Washington where it purchases [57] and receives fish and transports the same to its canning and processing plants in Washington and Oregon; and the plaintiff sells, and for many years last past has sold and distributed its products in the states and territories of the United States and in England and Continental Europe and Australia.

V.

That for more than fifty years last past the plaintiff and its predecessor corporation in its business, has caught and purchased marine products taken and acquired from the Pacific Ocean and its tributaries, which it, and its predecessor have processed, canned and otherwise placed in condition for sale and disposal in interstate and foreign commerce, and in carrying on its said business it has been and is the necessary practice of the plaintiff to contract in advance for the sale of its products in interstate commerce, and in said connection has, and immediately prior to the filing of this complaint had entered into contracts for the sale and disposal of shad, shad roe, salmon and other products of the Pacific Ocean and tributaries and waters adjacent to the states of Washington and Oregon, and lying within and without the territorial limits thereof. That said contracts were entered into in anticipation of a free, open market for the purchase of the raw material from fishermen engaged in fishing in said waters.

VI.

That certain of the defendants, and many other persons heretofore organized an association or organization known as "The Pacific Coast Fishermen's Union" of which the defendant H. B. Hinton is president, and George Bambrick is secretary; the said H. B. Hinton is a resident and inhabitant of the State of Washington, domiciled and residing

at Aberdeen in said state; the said George Bambrick is a resident and inhabitant of the State of Oregon, having his domicil at Astoria, Oregon. The defendant Leroy Chenowith is also a member of said organization and is a resident and inhabitant of the state of Oregon, having his domicil at Reedsport, Oregon, and is the secretary of the local branch of said organization located at Reedsport, which local branch is known and designated as "The Umpqua Local of the Pacific Coast Fishermen's Union."

That the defendants J. B. Brandt, Chas. J. Mackie, Glenn [58] Murdock and Ferdinand Sandness are residents and inhabitants of the state of Oregon, having their domicils at Astoria, and said last four named, together with said George Bambrick, and the said H. B. Hinton, are members of the governing body of said organization which controls its activities and actions.

The defendant P. J. Barton is a resident of the state of Oregon, having his domicil at Tillamook.

The defendant Jack Curtis is a resident and inhabitant of the State of Oregon, having his domicil at Astoria.

The defendants Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis and Arthur Hertel are residents and inhabitants of the state of Oregon and domiciled at Reedsport.

The defendants Charles Marks and Clyde Chase are residents and inhabitants of the state of Oregon,

the defendant Marks having his domicil at Gardner, and the defendant Chase having his domicil at Reedsport.

VII.

That said organization is composed of several hundred other persons who are residents and inhabitants and have their domicils in the territory of Alaska, and the states of Oregon, California and Washington.

A number of said members are aliens, and under the laws of the states of Washington and Oregon are not permitted to fish within the territorial jurisdictions of said states. A large number of the members of said organization conduct their fishing operations in the Pacific Ocean beyond the territorial limits of said states, and after capturing fish in said ocean bring the same to the markets in the adjacent land areas. In its membership of said organization are a number of fishermen conducting a fishing business in navigable bays, rivers and other streams in the states of Oregon and Washington which are tributary to the Pacific Ocean, which fishermen, who fish in the Pacific Ocean and the adjacent waters, own, or lease the boats they operate, and own the nets and other gear used in their operations, but each thereof operates his business according to his own desires uncontrolled by the plaintiff, [59] or anyone else, save and except the domination and control of said organization herein-after more particularly set forth.

VIII.

That the navigable waters of the Umpqua River and its tributary Smith River are one of the principal sources of supply of shad, and said shad is available in said navigable waters for a period of approximately sixty days, part of April, May and a part of June of each year.

That from said shad fish a valuable product known as "shad roe" is taken, which the plaintiff and other processors dispose of either in the fresh market, or by processing and canning the same, and the plaintiff now has, and for many years last past has had a large and valuable business in processing, canning, selling and disposing of canned shad, as well as canned shad roe; and in anticipation of the business in the usual course, as it had heretofore been transacted, the plaintiff has contracted to sell a large amount of said canned shad and canned shad roe, which product the plaintiff anticipated would be produced from shad captured in the navigable waters of said Umpqua River and Smith River.

IX.

That under the laws of the State of Oregon the season for commercial fishing in said waters opened on April 20 and salmon, shad and other commercial fish were in said waters in commercial quantities at said time. That said waters are not only the principal source of supply of shad for the plaintiff's said operations, but also a substantial source of supply of salmon and other marine products.

X.

That in anticipation of its carrying on its business as it had heretofore done, the plaintiff leased from the port authorities certain dock facilities and constructed thereon a cold storage plant and other facilities for the reception of, purchasing, storing and handling of said fish products, and also erected thereon net racks, tanning tanks, and adjacent thereto a mooring place for the convenience and accommodation of the fishermen selling their products to the plaintiff. [60]

That the plaintiff also placed said operations in charge of competent men and prepared to carry on the fish dealing operations at Reedsport as it has heretofore done.

XI.

That on and immediately following April 20, 1939, a large number of fishermen began fishing in said waters and captured a substantial amount of fish and sold the same to the plaintiff at the regularly established market price, and said fishermen continued said operations until to and including Saturday, April 29, 1939, and continued to sell said fish to the plaintiff to and including said date, when the defendants, as is hereinafter more particularly set forth, caused all fishermen fishing in said waters to cease selling any fish to the plaintiff.

XII.

That prior to said date the defendants demanded of the plaintiff that it enter into a contract with

said organization wherein and whereby the plaintiff would purchase no fish in said area from anyone not a member of said organization. That all of the fishermen fishing in said waters are members of said organization, but the plaintiff being advised that its execution of said contract would constitute a violation of the laws of the United States of America, declined and refused to sign the same; whereupon, the defendants Bambrick, Brandt, Mackie, Murdock and Sandness, acting as the controlling authority of said organization, and by and through the defendants Barton and Curtis, through threats, intimidation and coercion induced the fishermen fishing in said waters to decline, and refuse to sell to the plaintiff any fish caught in said waters, and thereby said defendants effectively prevented the plaintiff from buying any fish caught in said waters.

That until said action of said defendants, the said plaintiff had been able to purchase and acquire its full requirements of fish from said waters from fishermen who were ready, able and willing to sell their fish to the plaintiff, and who would sell their said fish to the plaintiff except for the intimidation, coercion and threats of said defendants. [61]

That in carrying out their said unlawful purpose the said defendants threatened said fishermen with fines and penalties and with expulsion from said organization, and with preventing their carrying on their fishing operations, and the destruction

of their business, and that said fishermen dealing with plaintiff as aforesaid were and will be prevented from carrying on the business of fishing or marketing the same.

That the defendant, the Pacific Coast Fishermen's Union, and the other defendants who control its operations, included in which are the defendants Bambrick, Brandt, Mackie, Murdock, Sandness, Barton, Curtis, Chenowith and Weaver, threatened the fishermen operating at Reedsport and on the Umpqua River and Smith River that said Pacific Coast Fishermen's Union would inflict fines and penalties upon such thereof as should sell fish to the plaintiff.

XIII.

The Court further finds that on and after the commencement of this suit on May 4, 1939, and after the temporary restraining order issued by this court had been served, certain of the defendants fishing in said area sold fish to the plaintiff, and that said organization, and the above designated members thereof, to wit: Bambrick, Brandt, Mackie, Murdock, Sandness, Barton, Curtis, Chenowith and Weaver have, since said sales were made, threatened, and now threaten unless restrained by decree of this court, to inflict penalties on said fishermen who are members of said organization, and who have during the pendency of this suit sold fish to the plaintiff; and the court further finds that in open court on Saturday, June 3, 1939,

Ben Anderson, the attorney for all of the defendants appearing herein, stated in open court that it was the intention of said defendants to discipline all such fishermen as had sold fish to the plaintiff.

XIV.

That at least five of said fishermen, who, during the current fishing season have been and were, up to April 29, selling their fish to the plaintiff, are using powered boats heretofore belonging to the plaintiff, sold to them by the plaintiff under the agreement that said fishermen will sell and deliver their fish caught [62] in said areas to the plaintiff until their purchase price is paid; the plaintiff agreeing to pay the full going market price for said fish.

Said purchasers had not paid for said boats, one sale had been consummated and a chattel mortgage had been taken, and the agreement under which said boats were sold required the purchasers to sell the fish they caught to the plaintiff until the purchase price had been paid; all purchasers had been fishing and selling their fish to the plaintiff until required to desist by the Pacific Coast Fishermen's Union and, its members, whereupon they ceased selling fish to the plaintiff, and have not sold fish to the plaintiff since.

That said market price for fish in said area was established by said organization in agreement with the various dealers, including the plaintiff, who purchase fish in said area, and as aforesaid, there

was no disagreement between the plaintiff and the fishermen selling fish to the plaintiff over the price thereof, or over any other matter entering into the business between said plaintiff and said fishermen; and except for the interference by the defendants with business relations between said plaintiff and said fishermen, said fishermen would have continued to catch fish and sell and deliver same to plaintiff.

XV.

The defendant, the Pacific Coast Fishermen's Union, was organized in 1932 and was made up originally of troll fishermen fishing in the international waters opposite the states of Oregon, Washington and California, and the territory of Alaska. Said troll fishing is carried on substantially as follows: Powered boats are used and the fish are caught with hooks and line; a supply of ice is taken aboard at the beginning of the voyage, and as the fish are caught they are suitably cared for, and dependent on conditions, the voyage lasts from three days to two weeks. The boat is manned by from one to three men, one of whom is usually, if not always, the owner of the boat, which, with its equipment, has a value of from \$100.00 to \$15,000. These boats are operated in all respects outside the control of the plaintiff, or any other fish processor, and solely under the control and [63] jurisdiction of the captain (owner of the boat). The voyage is concluded by returning to some fish re-

ceiving station selected by the captain of the boat, where the fish are sold and delivered at the going market price.

XVI.

The uniform interpretation and practice under the constitution, and by-laws of the Pacific Coast Fishermen's Union as the same appears by the evidence in this case is summarized as follows: The organization assumes jurisdiction over troll fishing in Alaska, trolling, gill-netting and crabbing along the coasts of British Columbia and Puget Sound, along the coasts of, and in the states of Washington, Oregon, and California, exclusive of the Columbia River and its tributaries; it has claimed to control 90% of the troll fishing in these areas and 100% control of all types of fishing in the Umpqua and Smith Rivers is undisputed, and therefore found to be a fact.

The jurisdiction of Pacific Coast Fishermen's Union as far South as Crescent City, California, was enforced in 1938 against the plaintiff to the extent where its boycott of the plaintiff was so efficient that the plaintiff withdrew its receiving station from said area.

The defendant, Pacific Coast Fishermen's Union, so far controlled the Coos Bay area that in 1938 it prevented fishermen who had caught fish in the international waters from selling or delivering their fish at Marshfield, and by picketing the waterfront made it impossible for these non-member fishermen

to receive ice, laundry and living supplies from merchants and others desiring to trade with them.

By threatening to boycott his business in Alaska, they induced a Seattle fish buyer who proposed to purchase from these outside fishermen, to withdraw his purchasing office at Marshfield, and thereby completely closed said area to all fishermen excepting those belonging to the Pacific Coast Fishermen's Union.

It sought a complete monopoly of any sales and delivery of fish at Westport on the Pacific Coast of the State of Washington in June, 1937, and continued to prevent fishermen who had captured [64] fish in the international waters opposite the states of Oregon and Washington from delivering and selling their fish on land at and near the vicinity of Westport until enjoined from such practices by the state courts of the State of Washington.

It completely closed the mouth of the Columbia River and the estuary of said river to all troll fishermen not members of said organization, and has completely and effectively prevented fishermen who had caught their fish in the Pacific Ocean, and particularly in the international waters opposite the states of Oregon and Washington, from selling or delivering their fish to any dealer at Astoria, Oregon, Ilwaco, Washington, or the vicinity thereof, until a substantial amount of fish offered for delivery had spoiled, until finally a Seattle buyer received the merchantable portion of said fish at

Ilwaco, Washington, and transported the same to Seattle, and said condition continued until the close of the fishing season, in the year 1938.

XVII.

A number of residents of Astoria, Oregon, who had followed troll fishing for many years, were effectively prevented from selling their troll-caught fish in the state of Oregon, or in the state of Washington, except at Westport, and then only after said injunction had been granted. Among said persons were Leonard Pederson and Louis Henningsen, both of whom have resided at Astoria and have followed fishing for twenty years, said Louis Henningsen being the owner of his own residence, and a powered troll boat costing in excess of \$9000; both of which are assessed and upon which he pays taxes in Clatsop County. The said Pederson is also a resident, home-owner, and taxpayer of said county, and became a member of the Pacific Coast Fishermen's Union, but was compelled to either withdraw his membership, or pay a fine of \$100, unless he withdrew his membership in a cooperative fishermen's organization having headquarters at Seattle, the principal purpose of which organization was to purchase supplies for the fishermen, and assist them in marketing such of their fish as they saw fit to sell at Seattle. Said Pederson then withdrew from Pacific Coast Fishermen's Union, along with a large number of other fishermen similarly situated; whereupon, the Pacific Coast Fishermen's Union

blacklisted them and posted their [65] names at the fish receiving stations dominated by the Pacific Coast Fishermen's Union for the purpose of preventing said Pederson and said other fishermen from selling fish at said stations, with the result that they were unable to sell any fish in the state of Oregon, which, as aforesaid, continued until the end of the 1938 fishing season.

That it is the regular practice of a large number of said troll fishermen, including the said Henningsen and Pederson, and a large number of fishermen belonging to said Pacific Coast Fishermen's Union, to commence troll fishing early each season off the coast of Alaska and deliver their fish to buyers at the Alaska ports, and as the season progresses their operations proceed southward along the British Columbia coast with deliveries at Seattle, later at Westport, Columbia River, and at the close of the season the fishing is opposite Northern California and Southern Oregon, with deliveries normally made to Crescent City and Coos Bay Points. That on account of the interference with commerce by the defendants, particularly the Pacific Coast Fishermen's Union and its members, fishermen not belonging to said organization have been prevented from delivering to Crescent City and the Coos Bay and other Oregon Ports, with the result that said fishermen are required either to cease fishing and delivering their fish, or to transport the same to Westport, Washington, which is protected by said injunction order, or to Seattle, which entails an

unnecessary trip consuming three days or more, and unless said boats are equipped with sufficient ice for such additional trip it is not only uneconomical, but impossible to make delivery of said fish in merchantable condition.

XVIII.

During said years said defendant Pacific Coast Fishermen's Union had procured contracts with all of the buyers of fish located in the state of Oregon, and along the Columbia River in the State of Washington whereby the buyers would not purchase fish from anyone not a member of said organization, and said Pacific Coast Fishermen's Union induced the signing of said contracts by the threat that it would prevent all of its members from dealing with any buyers unless [66] he executed a contract containing such exclusive features. That by the terms of said contracts neither said Pacific Coast Fishermen's Union, nor any of its members, undertook any obligation whereby any member of the said Pacific Coast Fishermen's Union would fish, or sell any fish to anyone, but said contracts, as interpreted by both parties thereto, expressly prohibited the buyer from purchasing from anyone not a member of said Pacific Coast Fishermen's Union, and, as hereinabove found and determined, said organization, through its membership controlled 90% or more of the troll fishermen, and in areas 100% of all fishing. Its control of the Umpqua River and Smith River was and is complete and said area

produces more than one million pounds of fish per annum.

That the exclusive feature of the contract entered into in 1936, 1937 and 1938 by the Pacific Coast Fishermen's Union and its members, and all, or practically all of the buyers of fish in Oregon and/or Coast points in the State of Washington, and in California as far south as Crescent City, is substantially the same as the contract demanded by said Pacific Coast Fishermen's Union and its members for the year 1939, which is as follows:

"That it is further understood by all parties herein that the union members shall not be required to work with and/or alongside non-Union employees."

It was admitted by the plaintiff, and the principal officers of the defendant Pacific Coast Fishermen's Union while on the witness stand, that said language means that no buyer signing said contract is permitted to purchase any fish from any person not a member of said Pacific Coast Fishermen's Union.

The defendant Leroy Chenowith is secretary of the Reedsport local of the defendant Pacific Coast Fishermen's Union and a member of its organization committee and active in its affairs. The defendant Walter Weaver is also a member of said organization and of said Reedsport local, and is a member of the managing committees of said local organization.

The defendant Charles Marks and defendant Clyde Chase are not fishermen and are not members

of the Pacific Coast Fishermen's Union, but each is a fish buyer operating, and each having a place [67] of business at the mouth of the Umpqua River. Each has his own plant and is an extensive buyer of fish from fishermen belonging to defendant Pacific Coast Fishermen's Union.

The defendant Chenowith works for the defendant Chase as a buyer and receiver of fish, but the plant is non-union and no union men work for defendant Chase, except the defendant Chenowith.

The defendant Weaver buys fish for Banks & Cole, another non-union fish dealer.

Defendant Marks, in his fish operations, conducts a non-union shop and buys his fish from the members of Pacific Coast Fishermen's Union.

That said Marks, Chase, and Banks & Cole, since the defendant Pacific Coast Fishermen's Union ordered its members to refrain from selling fish to the plaintiff, have been paying 2¢ for male shad, 20¢ for female shad, and 9¢ per pound for salmon; and at the same time, and in the same market, the plaintiff has been paying 2¢ for male shad, 22¢ for female shad, and 10¢ per pound for salmon, notwithstanding which fact, the defendant Pacific Coast Fishermen's Union has been able to, and has prevailed upon its members (with the exception of approximately fifteen) to sell their fish to Banks & Cole, and to defendants Marks and Chase, and defendants Marks and Chase have entered into a contract with the Pacific Coast Fishermen's Union

containing said exclusive clause, whereby they agree not to purchase from any person not a member of said organization.

XIX.

The court finds that there is an open, competitive market for fish and other marine products at the mouth of the Umpqua River and also at the seaports along the coast of California, Washington, Oregon, and the territory of Alaska. That the exclusive contract required by the Pacific Coast Fishermen's Union, as a condition precedent to purchasing any fish from any of its members, is intended to create a monopoly in fishing and other marine products offered for sale and sold in said states and territory, and is against the interest of the public, and violates the rights of persons not members of said organization, including other fishermen, the plaintiff, and other processors dealing in fish and other marine products.

That the defendant Pacific Coast Fishermen's Union and its members and the defendants Marks and Chase, have entered into a plan, scheme and conspiracy having for its purpose the creation of a monopoly along the coast of the states of California, Washington and Oregon, and in the territory of Alaska, in the capturing, selling dealing in and processing and marketing of fish and other marine products, and the products produced therefrom, against the interests of the public and all other persons not belonging to said organization,

and that the purpose in requiring said contracts, as hereinabove described, is to effectively control and monopolize the capturing, taking, selling, dealing in, and processing fish and other marine products in said states and territory, and of preventing other persons from entering into said business, either as fishermen, processors, or otherwise.

XX.

The defendants allege that Pacific Coast Fishermen's Union is a labor organization, but the court finds this is not true. The plaintiff alleges that said Pacific Coast Fishermen's Union is a trade organization, which, in a limited sense, is true, but the court finds and determines that said Pacific Coast Fishermen's Union substantially conforms to the requirements of Sections 521 and 522, Title 15, United States Code Annotated, authorizing the formation by fishermen of organizations for the purpose of carrying on their business; but the court further finds that this statute does not authorize the creation of a monopoly, nor take from an injured party the redress given to him by the Anti-Trust Laws of the United States.

XXI.

That the plaintiff is not engaged in fishing itself, but purchases fish from fishermen, and at the present time produces a large amount of canned fish from its two processing plants in Alaska, and from its floating cannery the steamship "Mennon", and

produces a large amount of canned fish from its two plants in the state of Washington and its two plants in the State of Oregon, and at the present time provides more than 60% of all of the processed [69] fish produced in the state of Oregon, as well as a very substantial amount of the processed fish produced in the state of Washington, and Alaska.

As a condition precedent to buying any fish from any member of the Pacific Coast Fishermen's Union, said organization has required and now requires that plaintiff enter into a contract whereby it will purchase no fish from any person not a member of said organization, and the court finds that if such contract had been entered into the plaintiff would have become a party to said plan, scheme and conspiracy of said defendants, and would thus have been guilty of violating the Anti-Trust Laws of the United States.

XXII.

The court further finds that there was no controversy between the plaintiff and defendant Pacific Coast Fishermen's Union, or any of its members, over the price of fish to be paid, or the price of ice or other supplies to be sold, or over any other matter entering into transactions between the plaintiff and any of the defendants, save and except only the requirement by the Pacific Coast Fishermen's Union and its members, that said exclusive contract be entered into.

XXIII.

The court further finds that certain members of the Pacific Coast Fishermen's Union are willing to sell their products to plaintiff and would do so except for the interference by the said Pacific Coast Fishermen's Union and other members thereof.

XXIV.

That following April 29, 1939, due to the interference by the Pacific Coast Fishermen's Union and the defendants Bambriek, Brandt, Mackie, Murdock, Sandness, Barton, Curtis, Leroy Cheno with, Walter Weaver, Charles Marks, and Clyde Chase, the fishermen fishing on the Umpqua and Smith Rivers, who theretofore had been delivering fish to the plaintiff, and who would have continued to deliver fish to the plaintiff except for the unlawful interference by said defendants, refrained for a period from making deliveries, and a number of said fishermen still refrain from making deliveries to plaintiff who otherwise would have sold and delivered fish to the plaintiff, which has resulted in damage to the plaintiff in the sum of \$600.00. [70]

XXV.

That the defendant Pacific Coast Fishermen's Union controls the production of fish suitable for the purposes of the plaintiff so that the plaintiff cannot operate its business in the states of Oregon and Washington if said defendant and its members are permitted to interfere and boycott the plaintiff

unless and until it enters into the form of contract containing the exclusive provision whereby plaintiff would agree to purchase fish from no one not a member of said Pacific Coast Fishermen's Union.

XXVI.

That the defendant Pacific Coast Fishermen's Union and its members, as part of their plan, scheme and conspiracy to gain complete control and monopoly of the fish capturing and processing business in the states of Oregon, Washington and California, and territory of Alaska, declined and refused to sell any fish to any concern which will not enter into a contract containing the provision prohibiting the purchase of fish and other marine products from any person not a member of said organization, and are now refusing to permit members of said organization to sell fish to any purchaser who has not and does not enter into such contract; that there are a number of other fish canning and processing plants in the state of Oregon and the state of Washington, who are ready, able and willing to purchase fish and other marine products from fishermen who are members of the defendant Pacific Coast Fishermen's Union, and who would purchase the same except for the interference by said organization, whereby it prevents each of its members from selling fish to any such processor or canner.

The court finds that the interference by the defendant Pacific Coast Fishermen's Union and its

members, with the catching and marketing of fish at the time of the commencement of this suit was wrongful and unlawful and violative of the rights of the plaintiff, the public and other fishermen and fish purchasers, and that except for the injunctive relief granted by this court, the defendants would have succeeded in wrongfully and unlawfully monopolizing commerce in fish and other marine products in the states of Oregon and Washington, and to a substantial extent in California, and the territory of Alaska, [71] and that said injunctive relief was proper and should be continued, and that the security given by the plaintiff should be exonerated.

XXVII.

After the commencement of this suit and the service of the complaint, summons and restraining order upon the defendants Glenn Murdock and Jack Curtis, they, together with two other officials of the defendant Pacific Coast Fishermen's Union, for the purpose of coercing and compelling plaintiff to enter into a contract with the defendant Pacific Coast Fishermen's Union and its members containing the exclusive provisions hereinabove referred to, procured re-affirmation of an agreement with other organizations and individuals theretofore having business relations with the plaintiff, and with whom the plaintiff intended and desired to continue business relations, and said defendants and said other officials procured said other persons and organizations to re-affirm that unless and until the

plaintiff entered into an agreement with the defendant Pacific Coast Fishermen's Union, satisfactory to the defendant Pacific Coast Fishermen's Union, that they, the said other persons and organizations would boycott the plaintiff and refuse to have any business dealings with the plaintiff, it being the intention of said defendants Glenn Murdock and Jack Curtis and said other officials of the defendant Pacific Coast Fishermen's Union thereby to coerce and compel the plaintiff to enter into a contract with the defendant Pacific Coast Fishermen's Union containing said exclusive provisions whereby the plaintiff would be obligated to refrain from purchasing fish from any person not a member of said defendant Pacific Coast Fishermen's Union; and it is further found that said defendants and said other officials did procure said other persons and organizations to re-affirm that unless and until a contract was entered into by the plaintiff to and with the defendant Pacific Coast Fishermen's Union, that the said other persons and organizations would refrain from having business relations with the plaintiff, and the defendant Pacific Coast Fishermen's Union then continued as it had theretofore done to insist that any contract between the plaintiff and the defendant Pacific Coast Fishermen's Union should contain said provisions excluding the plaintiff from purchasing fish from any one not [72] a member of the defendant Pacific Coast Fishermen's Union.

The following Findings of Fact numbered **XXVIII (II)** to **XLVIII (XXXI)**, both inclusive, which are hereby made in addition to the findings foregoing, and which are in addition to the foregoing Findings of Fact, were submitted by the defendants as "Proposed Findings of Fact", with the statement that the said findings were "in conformity with the record and with the Court's decision".

Where changes have been made in the findings proposed by defendants, such changes will be shown by italicizing words added, and by lining through words stricken out.

The numbering used by defendants in submitting proposed findings will be shown in parentheses.

XXVIII (II)

That in carrying on its business plaintiff purchases fish and other marine products from the following sources;

- (a) Purse seiners, gill netters, and trollers operating in Alaskan Waters.
- (b) Gill netters engaged in fishing in the Columbia River.
- (c) Trollers engaged in fishing in the Pacific Ocean off the coast of Oregon and Washington, ninety (90%) per cent of whom are members of the Pacific Coast Fishermen's Union.
- (d) Persons engaged in taking fish in the rivers, bays, and inlets in the states of Oregon and

Washington, exclusive of the Columbia River, ninety (90%) per cent of whom are members of the Pacific Coast Fishermen's Union.

That a large number of said fishermen own or lease their boats, nets, and other fishing gear, ranging in value from \$100.00 to \$15,000.

XXIX (XII)

That on and immediately following April 20, 1939, a large number of fishermen began fishing in said waters (*the Umpqua and Smith Rivers*) and captured a substantial amount of fish and sold the same to the plaintiff at the regularly established market price, and said fishermen continued said operations until to and including Saturday, April 29, 1939, and continued to sell said fish to the plaintiff to and including said date, when the defendants, the Pacific Coast Fishermen's Union, ordered its members operating in the Umpqua River to cease delivering fish to plaintiff due to the fact that the Pacific Coast Fishermen's Union and the plaintiff were unable to agree [73] upon contractual relationships with regard to the sale of fish to plaintiff, *to-wit, the exclusive buying clause.*

XXX (XIII)

That prior to said date the defendants demanded of the plaintiff that it enter into a contract with said organization wherein and whereby the plaintiff would purchase no fish in said Umpqua River area from anyone not a member of said organization.

That all of the fishermen fishing in said waters are members of said organization, but the plaintiff being advised that its execution of said contract would constitute a violation of the laws of the United States of America, declined and refused to sign the same; whereupon, the defendants, the Pacific Coast Fishermen's Union, through its officers, induced the fishermen fishing in said area to decline, and refuse to sell to the plaintiff any fish caught in the Umpqua River, and thereby said defendants effectively prevented the plaintiff from buying any fish caught in said waters.

XXXI (XIV)

That the Constitution and By-Laws of the Pacific Coast Fishermen's Union provide, among other things, that "the Union Members shall not deliver catches outside of Union agreements".

XXXII (XV)

That the Court finds that in inducing said fishermen to decline and refuse to sell fish to plaintiff, defendant did not use any threats of force or violence nor does the evidence show that any threat of fines were made by any of the defendants but that the fishermen so declined to deliver fish, were prompted to so decline by reason of the above provision of the Constitution and By-Laws of the Pacific Coast Fishermen's Union provided that "the Union members shall not deliver catches outside of Union agreements", *and by the knowledge that they*

would be subject to fines and other disciplinary action.

XXXIII (XVI)

The court further finds that on and after the commencement of this suit on May 4, 1939, and after the temporary restraining order issued by this court had been served, certain of the defendants fishing in the Umpqua River area sold fish to the plaintiff in spite of the [74] provisions of the Constitution and By-Laws of said organization; that on the 3d day of June, 1939, Ben Anderson, attorney for all the defendants appearing herein stated in open court that it was the intention of the Pacific Coast Fishermen's Union, particularly the Umpqua local, to discipline such members as had sold fish as aforesaid, and that unless the defendants were specifically restrained from doing so the Pacific Coast Fishermen's Union would discipline its members in conformity with the provisions of its Constitution and By-Laws.

XXXIV (XVII)

That at least five of said fishermen, who, during the current fishing season having been and were, up to April 29, selling their fish to the plaintiff, are using powered boats heretofore belonging to the plaintiff, sold to them by the plaintiff under the agreement that said fishermen will sell and deliver their fish caught in said area to the plaintiff until their purchase price is paid; said purchasers had not paid for said boats, one sale had been consum-

mated and a chattel mortgage had been taken. This purchaser and the other prospective purchasers had been fishing and selling their fish to the plaintiff until required to desist by the Pacific Coast Fishermen's Union and its members, whereupon they ceased selling fish to the plaintiff, and have not sold fish to the plaintiff since.

That said market price for fish in said area was established by said organization in agreement with the various dealers, including the plaintiff, who purchase fish in the Umpqua River area, and as aforesaid, there was no disagreement between the plaintiff and the fishermen selling fish over the price thereof, the only disagreement being whether defendants could refuse to sell their products to plaintiff unless plaintiff agreed to buy no fish and service no boats for persons in the Umpqua River area are not members of the Pacific Coast Fishermen's Union.

XXXV (XVIII)

The defendant, the Pacific Coast Fishermen's Union, was organized in 1932 and was made up originally of troll fishermen [75] fishing in the international waters off the coast of the states of Oregon, Washington and California, and the territory of Alaska. Said troll fishing is carried on substantially as follows: Powered boats are used and the fish are caught with hooks and line; a supply of ice is taken aboard at the beginning of the voyage, and as the fish are caught they are suitable cared for, and dependent on conditions, the voyage lasts

three days to two weeks. The boat is manned by from one to three men, one of whom is usually, if not always, the owner of the boat, which, with its equipment, has a value of from \$100 to \$15,000. The voyage is concluded by returning to some fish receiving station selected by the captain of the boat, where the fish are sold and delivered at the going market price.

The troll fishermen have been and now are members of defendant, Pacific Coast Fishermen's Union, whose constitution and by-laws are in evidence.

XXXVI (XIX)

The Pacific Coast Fishermen's Union, since its organization in 1932, has functioned as a collective bargaining agency for *certain of* those engaged in catching fish in the Pacific Ocean adjacent to the States of Oregon and Washington, and in the streams, bays, and inlets of the Oregon and Washington Coast, excluding the Columbia River, and has during said period entered into contractual relationship with plaintiff and other packers, which contracts have generally provided that the Pacific Coast Fishermen's Union shall be recognized as the bargaining agency for *its members* and providing for the price to be paid for various kinds and grades of fish; and said contracts ordinarily carried a clause which has been the chief subject of the present controversy, which clause reads as follows:

"That it is further understood by all parties herein that the Union members shall not be required to work with, and/or alongside of non-union employees".

It was admitted by plaintiff and the principal officers of the defendant, Pacific Coast Fishermen's Union, that said language means in substance that within the local area where such contracts are made no buyer signing said contract is permitted to purchase any fish from any person not a member of the Pacific Coast Fishermen's [76] Union, and that such buyer will not service and ice boats for persons other than members of the Pacific Coast Fishermen's Union within such local area. Such a contract, would preclude the plaintiff *and other buyers* from purchasing fish or other marine products from persons engaged in taking fish in the *said* waters, *other than members of defendant organization, but* such contract *would not preclude* plaintiff from operating *its* own fishing fleet if *it* so desired. *Plaintiff does no fishing.*

XXXVII. (XX)

The Pacific Coast Fishermen's Union is an organization of persons engaged in fishing and maintains its principal office at Astoria, Oregon; that it is chartered by the International Fishermen and Allied Workers of America and the Congress for Industrial Organizations; that the Pacific Coast Fishermen's Union issues charters to various local

unions in various ports of the states of Washington and Oregon and have issued such charters to persons engaged in fishing at Reedsport, Westport, Coquille, and other Oregon and Washington ports; that it has been the custom of these local unions so chartered to enter into contractual relationships as aforesaid with plaintiff and other packers and buyers.

The Pacific Coast Fishermen's Union is also a member of the Maritime Federation of the Pacific; the Maritime Federation of the Pacific is a federation of labor organizations of the Pacific Coast; and among the organizations so federated within said organizations are the International Longshoremen and Warehousemen's Union, the Alaska Fishermen's Union, the United Fishermen's Union, the Cannery Workers Union, the Marine, Cooks and Stewards Union, the Ships Radio Operators Union, and many other organizations whose membership is engaged in maritime work on the Pacific Coast.

XXXVIII. (XXI.)

The Court finds that prior to the organization of the Pacific Coast Fishermen's Union those engaged in fishing were compelled to sell their products at low prices; that during *the period of the recent general depression* silver-side salmon on occasions were sold to the packers and buyers as low as one cent per pound, and [77] concurrent therewith the retail price of the same product sold to the public

in the same area for "between 15 and 20 cents" per pound: that it would therefore seem that it is necessary for those engaged in fishing to arrange, by lawful contractual relationships, agreements for the sale of their products prior to taking of the fish and other marine products. There is no evidence offered in this case tending to show that the wholesale or retail prices paid ~~by~~ consumers have been enhanced by the activities of these defendants.

XXXIX (XXII)

The Court finds that plaintiff and other packers and dealers of fish and other marine products have heretofore been organized into an organization called the Commercial Fisheries Association; that said association has throughout its existence bargained with the Pacific Coast Fishermen's Union, and has been the collective bargaining agency for packers and dealers; that shortly prior to the institution of this suit plaintiff withdrew from said organization.

XL (XXIII)

The defendants allege that the Pacific Coast Fishermen's Union is a labor organization; but the plaintiff alleges that the Pacific Coast Fishermen's Union is a trade organization. The Court finds and determines, *in accordance with defendants' claim*, that the Pacific Coast Fishermen's Union substantially conforms to the requirements of Section 521 and 522, Title 15 United States Code Annotated,

authorizing the formation by fishermen of *Cooperative* organizations for the purpose of carrying on their business; it finds that said organization markets the products only of its members and no others; that each member of said organization has but one vote and does not or has not declared any dividends in excess of eight (8%) per cent but derives its revenue from membership dues.

XLI (XXIV)

The Court finds that some members of the Pacific Coast Fishermen's Union operating in the Umpqua River are willing to sell their products to plaintiff and have done so since the restraining order was entered herein and would continue to do so except for the interference by the Pacific Coast Fishermen's Union and other members thereof.

[78]

XLII (XXV)

The Court finds that the Fishermen's Cooperative Association is a voluntary association of persons engaged in capturing fish in the Pacific Ocean and in the bays and tributaries adjacent to the States of Oregon and Washington and is a rival organization of the Pacific Coast Fishermen's Union; that the principal marketing outlet of the Fishermen's Cooperative Association is the Seattle Fresh fish market; that on numerous occasions certain members of the Fishermen's Cooperative Association have attempted to market their fish in the State of Oregon; that the defendants have used their best efforts to

prevent the Fishermen's Cooperative Association from marketing fish in Oregon unless such persons join the Pacific Coast Fishermen's Union and withdrew from the rival organization.

The evidence shows that six members of the Fishermen's Cooperative Association are residents of Oregon and that particularly two of these persons, one Henningsen, and one Pederson, became members of the Pacific Coast Fishermen's Union but did not withdraw from the Fishermen's Cooperative Association, whereupon the Pacific Coast Fishermen's Union posted a list of names of persons, *including Henningsen and Pederson*, who were not in good standing for the purpose of preventing such persons from marketing their products with buyers who had contracts with the Pacific Coast Fishermen's Union.

XLIII (XXVI)

The Court finds that defendants Charles Marks and Clyde Chase are not members of the Pacific Coast Fishermen's Union but at all times mentioned in plaintiff's complaint and for some years past, have purchased fish and other marine products taken in the Umpqua River of Oregon and the surrounding districts; that each of the said two defendants own and operate receiving and processing plants in the mouth of the Umpqua River;

That the defendants Chas. Marks and Clyde Chase operate independently of each other—that is, Chas. Marks conducting his operation at Gardner,

Oregon, on the north side of the Umpqua River, and Clyde Chase conducting his operation at Reedsport, Oregon, on the south side of the Umpqua River. [79]

XLIV (XXVII)

That defendants Chas. Marks and Clyde Chase own and operate their separate fleets of fishing boats through an arrangement whereby members of the Pacific Coast Fishermen's Union lease boats from these defendants and turn in their catch and are paid the market price for the same; that it has been the custom of the trade for many years past that where the buyer or processor furnished boats as aforesaid it is tacitly understood that such fishermen shall deliver their catch to the buyer or processor owning the boats.

XLV (XXVIII)

That for *several* years past the defendants Charles Marks and Clyde Chase, as well as plaintiff Columbia River Packers Association, have entered into contractual relationships yearly with the Pacific Coast Fishermen's Union, which contracts have provided, among other things,

"That it is further understood by all parties herein that the Union members shall not be required to work with, and/or alongside of non-Union employees".

That during the early part of 1939 the plaintiff refused to enter into such agreement but that defendants Chas. Marks and Clyde Chase did enter into

such agreement with defendants. The evidence does not disclose that defendants Chas. Marks and Clyde Chase have committed any overt acts other than entering into said contract with the Pacific Coast Fishermen's Union.

XLVI (XXIX)

The Court finds that two years ago albacore was discovered in the Pacific Ocean off the coast of Oregon and Washington; that such fish were available in commercial quantities; that members of the Pacific Coast Fishermen's Union in the year 1938 captured large quantities of said fish; that in the year 1938 the facilities for processing and packing albacore were limited; that the supply of albacore was in excess of the ability of the packers and buyers to receive *and sell* the same; that it therefore became necessary to limit the catching their taking of albacore, and that the Pacific Coast Fishermen's Union entered upon a course of regulation which permitted its members only to fish on a rotating basis, that is, the Union would [80] dispatch boats of its members in rotation, in conformity to the capacity of the market to absorb the same;

The Court finds that the plaintiff and other packers and buyers have substantially increased their albacore packing facilities, but that there have also been a great infusion of new fishermen and boats scheduled to take albacore in 1939; and that members of the Pacific Coast Fishermen's Union are desirous of obtaining exclusive sales agreements in

order, *for one reason*, that they may gain full employment to the exclusion of non-members during the albacore fishing season of 1939.

XLVII (XXX)

The Court further finds that prior to the filing of the within named suit the Maritime Federation of the Pacific had passed a resolution providing that its affiliates would not make any contracts with plaintiff to furnish Alaska fishermen, cannery workers or other persons engaged in said industry under the jurisdiction of the affiliates of the Maritime Federation of the Pacific unless and until plaintiff had signed contracts with the Pacific Coast Fishermen's Union; that subsequent to the issuing of a restraining order herein the Maritime Federation of the Pacific at a regular meeting passed a motion affirming said former action; that at said time plaintiff's steamships "W. L. Thompson" and "Memnon" were docked at the port of Astoria and would not have been provided with crews by the Maritime Federation of the Pacific until a contract was signed by the Pacific Coast Fishermen's Union, and the plaintiff unless this court *issued the preliminary restraining orders heretofore issued herein*; that upon the issuance of the restraining order heretofore filed herein the essential affiliates of the Maritime Federation of the Pacific signed contracts with plaintiff, and loaded and moved said ships to Alaskan waters.

Note: I would have doubted the adequacy of the record to justify the foregoing Finding that plaintiff's steamships would not have been manned except for the restraining orders. I am making the Finding because defendants have requested it.

XLVIII (XXXI)

The Court finds that the Pacific Coast Fishermen's Union keeps its charter open and will admit to membership any bona fide [81] fishermen engaged in capturing fish in the Pacific Ocean adjacent to the states of Washington and Oregon and in the streams and tributaries thereof so long as such persons are of good moral character and will abide by the constitution and by-laws of said union, but requires that such fishermen withdraw their membership in rival organizations, particularly the Fishermen's Cooperative Association.

Based upon the Findings of Fact heretofore made herein, the court makes and finds the following

CONCLUSIONS OF LAW

L

That the plaintiff at the times alleged in the complaint was, ever since has been, and now is engaged in commerce within the meaning of the Anti-Trust Laws of the United States of America.

II

That the defendants H. B. Hinton, George Bambrick, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, Charles Marks, Clyde Chase, and Pacific Coast Fishermen's Union, its officers and members, at the times alleged in the complaint were, ever since have been, and now are engaged in commerce withing the meaning of the Anti-Trust Laws of the United States of America.

III

That the contract which the said defendants proposed to make with the plaintiff, if the same had been entered into and carried into effect, would have constituted a violation of the Anti-Trust Laws of the United States of America.

IV

That the contracts between the defendant Pacific Coast Fishermen's Union and the defendants Charles Marks and Clyde Chase for the year 1939, and the practices thereunder, constitute a violation of the Anti-Trust Laws of the United States of America. [82]

V

That the defendants above named, and the other officers and members of the defendant Pacific Coast Fishermen's Union, entered into a plan, scheme, conspiracy and contracts for the purpose of controlling and monopolizing the catching, reducing to possession and ownership, sale and delivery of fish and other marine products processing and marketing of processed products of fish and other marine products taken in the Pacific Ocean and its tributaries within and without the territory of Alaska, and the States of Washington, Oregon and California, all in violation of the Anti-Trust Laws of the United States of America.

VI

That said plan, scheme, conspiracy and contracts were carried into effect and are contrary to the interest of the public and violate the rights of other persons, associations and corporations engaged in catching, selling, purchasing, processing and dealing in fish and other marine products of the Pacific Ocean and its tributaries.

VII

That the plaintiff is entitled to a decree of this court enjoining and forever restraining the defendants and all of them, and all members of the defendant Pacific Coast Fishermen's Union, together with the agents, attorneys, employees, and servants of each and all thereof and those persons in active

concert or participation with them, or any of them, in said plan, scheme, conspiracy and contracts, or any thereof, from in any manner interfering with the legal transaction by the plaintiff of its business, and from preventing the plaintiff from lawfully purchasing fish and other merchantable products and goods, wares and merchandise of any character from any person willing to sell the same to the plaintiff, and from doing any act or thing tending to limit competition in, or create a monopoly of the industry of fishing, capturing and taking fish or other marine products from the Pacific Ocean and its tributaries, selling and disposing of the same, and purchasing fish and other marine products and transporting, processing and selling the same; and from in any manner interfering with the plaintiff in operating its steamships the "Memnon" and the [83] "Wm. L. Thompson", or either thereof, either in loading, unloading, outfitting, dispatching or operating the same, or in procuring, transporting, loading, unloading, shipping and trans-shipping or otherwise handling fish or other marine products, and the processed products therefrom, or any other merchandise or goods, or in procuring, loading, unloading, shipping, trans-shipping or otherwise transporting or dealing in any merchandise, supplies, machinery, equipment or other goods, wares and merchandise, or in employing employees in any way connected with the business of the plaintiff anywhere; and that said decree should further re-

quire the defendants to withdraw any act or thing by them, or any of them done, which had for its purpose, or which was intended, or which might result in any interference with the plaintiff legitimately carrying on its business, or any of its business; and that said decree should further declare the contracts existing between the defendant Pacific Coast Fishermen's Union and the defendants Charles Marks and Clyde Chase to be null and void, and should enjoin and restrain the defendant Pacific Coast Fishermen's Union, its officers and members, from entering into any contract with any person or concern, having for its purpose the creation or continuation of a monopoly, or tending to monopolize the industry of fishing in the Pacific Ocean and its tributaries, or dealing in, processing, or disposing of fish or other marine products taken from said Pacific Ocean and its tributaries.

VIII

Neither a labor dispute nor terms and conditions of employment, within the meaning of the Norris-LaGuardia Act, are involved in this case.

IX

The pleadings shall be deemed amended to cover such portions of the decree as are declaratory in nature, and either party may offer such amendment or amendments, if so desired.

That in addition to the Conclusions of Law foregoing, and the Conclusion No. XXI infra, the fol-

lowing Conclusions of Law requested by defendants are made (showing defendants' numbering and changes from the requested Conclusions as in the case of defendants requested Findings of Fact foregoing): [84]

CONCLUSIONS OF LAW

X (I)

That the plaintiff at the times alleged in the complaint was, ever since has been, and now is engaged in commerce within the meaning of the Anti-Trust Laws of the United States of America.

XI (II)

That the defendants, Chas. Marks and Clyde Chase, at all times mentioned in the complaint were and now are engaged in commerce within the meaning of the Anti-trust Laws of the United States of America.

XII (III)

That the defendants H. B. Hinton, George Bambrick, J. B. Brandt, Chas. J. Mackie, Glenn Murdoch, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaves, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, and Pacific Coast Fishermen's Union, its officers and members, at the times alleged

in the complaint were, ever since have been, and now are engaged in interstate and foreign commerce within the meaning of the Anti-Trust Laws of the United States of America.

XIII (IV)

That the contracts between defendants Pacific Coast Fishermen's Union and defendants Chas. Marks and Clyde Chase for the year 1939 and the practices thereunder constitute a violation of the Anti-Trust Laws of the United States of America, and *the defendants including Chas. Marks and Clyde Chase have thereby unlawfully combined and conspired to interfere with and restrain the trade and business conducted by the plaintiff among the several states and with foreign nations, all in violation of the Anti-Trust Laws of the United States.*

XIV (V)

That the contracts which the Pacific Coast Fishermen's Union and plaintiff have heretofore entered into in the past years containing the clause, [85]

"That it is further understood by all parties herein that the Union members shall not be required to work with, and/or alongside of non-Union employees"

and which contract the Pacific Coast Fishermen's Union now propose to make with plaintiff, if carried into effect, would constitute a violation of the Anti-Trust Laws of the United States of America, is unlawful and against public policy.

XV (VI)

That the provision contained in the constitution and by-laws of the Pacific Coast Fishermen's Union, to-wit: "that the Union members shall not deliver catches outside of Union agreements", *so long as the Union agreements contained an exclusive buying clause*, is an illegal provision, is against public policy, void, unenforceable and in violation of the Anti-Trust Laws of the United States of America.

XVI (VII)

That the defendants H. B. Hinton, George Bambrick, J. B. Brandt, Chas. J. Mackje, Glenn Murdock, Ferdinand Sandness, F. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, and Pacific Coast Fishermen's Union, its officers and members, have unlawfully combined and conspired to interfere with and restrain the trade and business conducted by the plaintiff among the several states and with foreign nations, all in violation of the *Anti-Trust Laws of the United States of America*.

XVII (VIII)

The Court concludes that the defendants against whom relief is sought are engaged in the same in-

dustry, trade, craft, or occupation in which such dispute occurs and have a direct interest therein but that the Court is not deprived of jurisdiction under the Norris-La Guardia Act in that this controversy is not a labor dispute *and does not involve terms and conditions of employment* within the meaning of said Act. [86]

XVIII (IX)

The Court concludes that the members of the Pacific Coast Fishermen's Union are producers, just as cattlemen, grain men, poultry raisers and orchardists are producers, but concludes that it cannot be maintained that a cooperative association of any of the types of producers named, having control of production, *to the extent shown herein*, could require of all buyers that they agree not to buy from any other producers within a given area, *to the extent involved herein*, nor can they lawfully forbid and prevent their members by fines and other disciplinary measures from selling to buyers who did not thus agree to buy only from cooperative members.

XIX (X)

The Court concludes that the provision of Section 522 of Title 15, United States Code Annotated does not constitute an exclusive remedy but that an injured person is entitled to redress *in a proper case* against such cooperative association under the Anti-Trust *Laws*.

XX (XI)

The plaintiff is entitled to a permanent restraining order against the defendants and each of them, restraining defendants and the Maritime Federation of the Pacific and all other persons from doing the acts complained of in plaintiff's complaint and described in the Findings of Fact herein.

XXI

That plaintiff is entitled to a judgment against the defendants Pacific Coast Fishermen's Union, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, Leroy Chenowith, Walter Weaver, Jack Curtis, George Bambrick and P. J. Barton, for the sum of Eighteen Hundred Dollars (\$1800.00), being triple the actual damages sustained by plaintiff, and for its costs and disbursements incurred herein.

Dated June 14, 1939.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed June 14, 1939. [87]

And Afterwards, to wit, on Wednesday, the 14th day of June, 1939, the same being the 85th Judicial day of the Regular March, 1939 Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [88]

In the District Court of the United States for the
District of Oregon

No. Civ. 126

COLUMBIA RIVER PACKERS ASSOCIA-
TION, INC., a corporation,

Plaintiff,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B.
BRANDT, CHAS. J. MACKIE, GLENN
MURDOCK, FERDINAND SANDNESS,
P. J. BARTON, JACK CURTIS, LEROY
CHENOWITH, WALTER WEAVER, O.
TANNER, O. H. BROWN, NEWTON CAN-
NON, WM. SCHOLTENS, ROY REAVIS,
ARTHUR HERTEL, HARRY ANSAMÀ,
JACK ANSAMÀ, J. W. BEECROFT,
HENRY BOYE, WILLIS KOOGLER, LEO
LYSTER, LYLE LYSTER, LAWRENCE
NOEL, GARTH PHILLIPS, CARL PYRTZ,
W. A. PYRTZ, ANDY TOPPI, CHARLES
PILTON, CHARLES MARKS, CLYDE
CHASE AND PACIFIC COAST FISHER-
MEN'S UNION, its officers and members,
JOHN DOE No. 1, JOHN DOE No. 2, JOHN
DOE No. 3, JOHN DOE No. 4, JOHN DOE
No. 5, JOHN DOE No. 6, JOHN DOE No. 7,
JOHN DOE No. 8, JOHN DOE No. 9, JOHN
DOE No. 10, JOHN DOE No. 11, JOHN DOE
No. 12, RICHARD ROE No. 1, RICHARD

ROE No. 2, RICHARD ROE No. 3, RICHARD ROE No. 4, RICHARD ROE No. 5, RICHARD ROE No. 6, RICHARD ROE No. 7, RICHARD ROE No. 8, RICHARD ROE No. 9, RICHARD ROE No. 10, RICHARD ROE No. 11, RICHARD ROE No. 12, PETER ROE No. 1, PETER ROE No. 2, PETER ROE No. 3, PETER ROE No. 4, PETER ROE No. 5 and PETER ROE No. 6,
Defendants.

DECREE

This cause having heretofore come on for trial before the Honorable Claude McColloch, a Judge of the above entitled court, the plaintiff appearing by Jay Bowerman and C. W. Pecore, its attorneys, the defendants appearing as more particularly appears in the two answers filed herein by Ben Anderson, their attorney; the court having heard the evidence and argument of counsel, and considered the briefs and authorities filed and submitted, and being fully advised, and having made and filed Findings of Fact and Conclusions of Law herein entitling the plaintiff to a decree as follows:

It Is Therefore Hereby Considered, Ordered, Adjudged and Decreed by the court: [89]

I.

That at the time alleged in the complaint the plaintiff was, ever since has been, and now is engaged in commerce among the several states and

with foreign nations within the meaning of the Anti-Trust Laws of the United States of America.

II.

That the defendants H. B. Hinton, George Bambrick, J. B. Brandt, Chas. J. Mackie, Glenn Murdoch, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, Charles Marks, Clyde Chase, and Pacific Coast Fishermen's Union, its officers and members, at the times alleged in the complaint were, ever since have been, and now are engaged in commerce among the several states and with foreign nations within the meaning of the Anti-Trust Laws of the United States of America.

III.

That the contract which the said defendants proposed to make with the plaintiff, if the same had been entered into and carried into effect, would have constituted a violation of the Anti-Trust Laws of the United States of America.

IV.

That the contracts between the defendant Pacific Coast Fishermen's Union and the defendants

Charles Marks and Clyde Chase for the year 1939, and the practices thereunder, constitute a violation of the Anti-Trust Laws of the United States of America, and are contrary to public policy, illegal and void.

V.

That the defendants above named, and the other officers [90] and members of the defendant Pacific Coast Fishermen's Union, entered into a plan, scheme, conspiracy and contracts for the purpose of controlling and monopolizing the catching, reducing to possession and ownership, sale and delivery of fish and other marine products processing and marketing of processed products of fish and other marine products taken in the Pacific Ocean and its tributaries within and without the territory of Alaska, and the States of Washington, Oregon and California, in undue and unreasonable restraint of trade, and all in violation of the Anti-Trust Laws of the United States of America.

VI.

That said plan, scheme, conspiracy and contracts were carried into effect and are contrary to the interest of the public and violate the rights of the plaintiff and other persons, associations and corporations engaged in catching, selling, purchasing, processing and dealing in fish and other marine products of the Pacific Ocean and its tributaries.

VII.

That the defendants, and each and all of them, together with all officers and members of the defendant Pacific Coast Fishermen's Union, and also the agents, attorneys, employees and servants of each and all of the defendants, and of said Pacific Coast Fishermen's Union, and its members, and all persons in active concert or participation with them, who receive actual notice of this decree by personal service or otherwise, [91] are forever enjoined and restrained from in any manner interfering with the legal transaction by the plaintiff of its business, and from preventing, or attempting to prevent, or conspiring to prevent the plaintiff from lawfully purchasing fish and other merchantable products, and goods, wares and merchandise of any character from any person otherwise willing to sell the same to the plaintiff, and from doing any act or thing tending to unduly or unreasonably limit competition in, or create a monopoly of the industry of fishing, capturing or taking fish or other marine products from the Pacific Ocean and its tributaries, selling and disposing of the same, and purchasing fish and other marine products, and loading, unloading, transporting, processing and selling the same; and from in any manner interfering with the plaintiff in operating its canneries and other plants and facilities and its steamships the "Memnon" and "Wm. L. Thompson" or either thereof, and its other ships, boats and facilities,

either in loading, unloading, outfitting, dispatching, or operating the same, or in procuring, transporting, loading, unloading, shipping, and trans-shipment, or otherwise handling, freezing, processing or selling fish or other marine products and the processed products therefrom, or any other merchandise or goods, machinery or supplies of every character, or in procuring, loading, unloading, shipping, trans-shipment, or otherwise transporting or dealing in any merchandise, supplies, machinery, equipment or other goods, wares, and merchandise, or in employing employees in any way connected with the business of the plaintiff anywhere; said defendants and each thereof are further hereby ordered and required to withdraw each and every act or thing by them, or any of them, done which had for its purpose, or which was intended to interfere, or which might result in any interference with the plaintiff legitimately carrying on all of its business [92] or any of its business; the contracts existing between defendant Pacific Coast Fishermen's Union and the defendants Charles Marks and Clyde Chase, wherein and whereby they severally agree not to purchase fish except from the members of the Pacific Coast Fishermen's Union are hereby decreed to be against the interests of the public and a part of the conspiracy to monopolize commerce in fish within the meaning of the Anti-Trust Laws of the United States, and said contracts for the year 1939 are hereby declared to be null and void; said de-

fendant Pacific Coast Fishermen's Union, its officers and members are further enjoined from entering into any contract, plan or conspiracy with any person or concern having for its purpose, or among its purposes, the creation, or continuation of a monopoly, or which tends to monopolize the industry of fishing in the Pacific Ocean and its tributaries, and of dealing in or processing of fish or other marine products taken from the Pacific Ocean and its tributaries.

VIII.

That the plaintiff have and recover of and from the defendants Pacific Coast Fishermen's Union, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, Leroy Chenowith, Walter Weaver, Jack Curtis, George Bambrick and P. J. Barton, and each of them, the sum of Eighteen Hundred Dollars (\$1800.00), being triple the actual damages sustained by plaintiff, and that plaintiff recover of and from the said named defendants, and each of them, its costs and disbursements incurred herein, taxed at \$383.15, and that execution issue for the collection thereof.

Dated June 14, 1939.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed June 14, 1939: [93]

And afterwards, to wit, on the 22nd day of June, 1939, there was duly filed in said Court, a Petition for New Trial, in words and figures as follows, to wit: [94].

[Title of District Court and Cause.]

PETITION FOR NEW TRIAL

Come now the defendants above named, by their attorney, Ben Anderson, and respectfully petition this Honorable Court for a new trial in this cause, under the rules of this Court, on the following grounds:

(1) Abuse of discretion by which defendants were prevented from having a fair trial, and particularly abuse of the Court's discretion in allowing plaintiff to amend its complaint after plaintiff and defendants had rested their respective case, and subsequent to the closing arguments of counsel.

(2) Insufficiency of the evidence to justify the decree, to-wit:

(a) Insufficiency of the evidence on damages from which the Court could determine that plaintiff was damaged in the sum of Six Hundred (\$600) Dollars or any other sum by acts of defendants.

(b) Insufficiency of the evidence from which the Court could determine that defendants are engaged in interstate or [95] foreign commerce.

(c) Insufficiency of the evidence to show that defendants entered into a plan, scheme, conspiracy and contracts in violation of the Anti-Trust Laws of the United States of America.

(3) Error in law in that the Court's conclusions are contrary to law, contrary to the evidence, and unsupported by the findings of fact.

(4) The Court erred in concluding, to wit:

(a) That defendants are engaged in interstate commerce.

(b) That the within cause does not involve a labor dispute within the meaning of the Norris-La Guardia Act.

(c) That the provisions of Section 522 of Title 15, United States Code Annotated does not constitute an exclusive remedy but that an injured person is entitled to redress in a proper case against such cooperative association under the Anti-Trust Laws.

(5) That the Court's decree is contrary to law and the evidence.

This petition is based upon the records and files of this cause, the pleadings, the court reporter's transcript of testimony and upon the Court's minutes of the trial.

BEN ANDERSON

Attorney for Defendants

[Verification] [96]

Due and legal service of the foregoing, and the receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon on this 22nd day of June, 1939.

C. W. PECORE

of Attorneys for Plaintiff

[Endorsed]: Filed June 22, 1939. [97]

And afterwards, to wit, on the 9th day of August, 1939, there was duly filed in said Court, a Supplemental Memorandum Opinion, in words and figures as follows, to wit: [98].

[Title of District Court and Cause.]

SUPPLEMENTAL MEMORANDUM.

The remaining question undisposed of on what defendants have designated as a Motion for New Trial, is whether damages can properly be claimed and allowed in a suit for an injunction under the Anti-Trust Laws. The authorities, prior to the New Federal Rules of Civil Procedure, are that damages may only be claimed in a separate law action. *Fleitmann v. Welsbach Street Lighting Co.* 240 U. S. 27, 67 L. Ed. 505; *Decorative Stone Co. v. Building and Trades Council of Westchester County*, C. C. A. Second Circuit, 23 Fed. (2d) 426;—*Certiorari denied*, 277 U. S. 594, 72 L. Ed. 1005. [99]

Have the New Rules changed this rule as to damages?

I believe they have.

Rule No. 2 reads as follows:

“There shall be one form of action to be known as ‘civil action.’ ”

In Note 2 to the above rule we learn:

“Reference to actions at law or suits in equity in all statutes should now be treated as referring to the civil action prescribed in these rules.”

Rule 18 provides as follows:

(a) * * * The plaintiff in his complaint or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counter-claim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. * * *

(b) * * * Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money."

Rule 20 and Forms 12, 13, 16 and 17, following the Rules, also have a bearing on the question.

Whether a defendant in an injunction suit under the Anti-Trust laws is still entitled to a jury trial on the amount of damages, and whether in such jury trial the question of violation of the Anti-Trust laws, in addition to the amount of the damages, is to be redetermined by the jury (assuming that the equitable features of the case have first been tried and ruled adversely to the defendant), are different questions.

The present defendants urge that they were not given fair warning by the complaint herein that damages, as well as injunctive relief, were to be claimed,—if they had had notice that damages were [100] to be claimed, they would have made timely demand for jury trial. On the other hand, plaintiff contends that jury trial was waived by failure to make timely demand.

The prayer of the complaint as to damages is as follows:

“For a decree ascertaining the damages suffered by plaintiff by reason of the unlawful acts of the defendants herein complained of, and awarding judgment in favor of the plaintiff and against the defendants, and each of them, for thrice the amount of said damages.”

The body of the complaint contained no allegation of damage prior to the commencement of the action. The sole allegation as to damage is contained in paragraph XVI, which reads:

“That if a restraining order is granted, no damage will ensue to the defendants, nor to any fisherman, whereas if a restraining order is not granted, the plaintiff will suffer a daily damage (excluding Sundays) continuing throughout the 1939 fishing season, in the aggregate amount of \$20,000, and unless restrained by an order of this court the defendants will continue their said unlawful conduct, and cause the plaintiff to suffer said damage.”

Defendants did not object to the testimony offered by plaintiff of damages occurring prior to the action, but, at the argument of the cause, objected to any claim for damages, on the ground that they had not been pleaded, defendants' counsel stating that if they had been advised by plaintiff's pleading that damages for prior acts would be claimed, defendants would have demanded a jury trial.

Plaintiff thereupon offered an appropriate amendment to its complaint to accord with the proof of damages made at the trial. Decision was reserved on the amendment, and the amendment allowed on the date the decree, which was favorable to plaintiff, was entered.

Plaintiff contends that defendants have waived their right to jury trial by failing to demand it earlier, but I take the view, first, that the complaint prior to amendment was not adequate to advise the defendants that damages for prior acts would be claimed; and second, that my ruling on the date when decree was entered for [101] plaintiff, allowing the amendment to the complaint, to include the allegations of prior damage, was the first time that the defendants had fair notice that damages were claimed and might be allowed, and was the first time defendants were under compulsion by the terms of Rule 38 of the New Rules to demand a jury trial. By that Rule defendants were given ten days in which to make such demand. They were deprived of this right by the immediate entry of the decree. It follows that the portion of the judgment

and decree awarding treble damages should be and it is hereby stricken.

The other portions of defendants' Motion (as indicated at the last hearing) will be denied.

This Supplemental Memorandum will be merged in any final opinion that may be prepared in this case.

Dated August 9th, 1939.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed August 9, 1939. [102]

And afterwards, to wit, on the 31st day of August, 1939, there was duly filed in said Court, a Motion to withdraw and to strike, in words and figures as follows, to wit: [103]

[Title of District Court and Cause.]

MOTION

Come now the above defendants by their attorney, Ben Anderson, and move the court as follows:

1. For an order authorizing and permitting said defendants to withdraw from the files and records of the above cause the Proposed Conclusions of Law heretofore filed by the defendants in said cause for the reason that said Proposed Conclusions of Law were filed through inadvertence and oversight.

2. For an order striking from the Findings of Fact and Conclusions of Law heretofore made and entered by the Court in the above cause the following statement appearing on page 31 of said Findings of Fact and Conclusions of Law:

“That in addition to the Conclusions of Law foregoing, and the Conclusion No. XXI infra, the following Conclusions of Law requested by defendants are made (showing defendants' numbering and changes from the requested Conclusions as in the case of defendants requested Findings of Fact foregoing):”

and also striking from the Conclusions of Law heretofore made and entered by the Court in the above cause paragraphs X and XXI, both inclusive, of said Conclusions of Law.

The foregoing motions are based upon the affidavit of Ben Anderson hereto attached and by reference made a part hereof.

BEN ANDERSON

Attorney for Defendants.

Guardian Bldg.

Portland, Oregon

Service accepted 8-31-39

JAY BOWERMAN

Attorney for Plaintiff. [105]

[Title of District Court and Cause.]

AFFIDAVIT

State of Oregon

County of Multnomah—ss.

I, Ben Anderson, being first duly sworn, depose and say:

That I am attorney for the defendants in the above cause; that heretofore I filed in said cause Proposed Findings of Fact and Conclusions of Law for and on behalf of said defendants; that through inadvertence and oversight the said Conclusions of Law filed by me were in conformity with the principles of law enunciated by the Court in the above cause; that said principles of law are contrary to the rules of law urged by affiant for and on behalf of the defendants herein and fail to express the views of the defendants as to the law based upon the Findings of Fact entered in this cause; that at the time of filing said Proposed Conclusions of Law, I was laboring under the mistake that said Proposed Conclusions of Law must conform to the principles of law enunciated by the Court in the Court's memoranda opinion theretofore filed in this cause; said Proposed Conclusions of Law were filed by me merely for the purpose of attempting to clarify the Court's decision and not for the purpose of showing the principles of law urged by affiant for and in behalf of defendants.

BEN ANDERSON

Subscribed and sworn to before me this 31 day of August, 1939.

EUGENE DOWLING

Notary Public for Oregon

My Comm. Expires: 2-24-39

[Endorsed]: Filed August 31, 1939. [106]

And afterwards, to wit, on the 7th day of September, 1939, there was duly filed in said Court, a Waiver of Damages and Remittitur, in words and figures as follows, to wit: [107]

[Title of District Court and Cause.]

WAIVER OF DAMAGES AND REMITTITUR

The plaintiff herein hereby expressly waives its claim for damages involved in this suit against each defendant herein not only in this suit, but for all purposes to the extent such claim for damages has been, or might have been litigated in this cause at the trial thereof, and hereby remits and discharges said defendants to the full extent thereof.

JAY BOWERMAN

Attorney for Plaintiff

**COLUMBIA RIVER PACKERS
ASSOCIATION, INC.,**

a corporation,

By **EDW. W. THOMPSON**

President

[Endorsed]: Filed September 7, 1939. [108]

And afterwards, to wit, on Thursday, the 7th day of September, 1939, the same being the 41st Judicial day of the Regular July, 1939 Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [109]

In the District Court of the United States for the District of Oregon

No. Civ. 126

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation,

Plaintiff,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHAS. J. MACKIE, GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS, LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEECROFT, HENRY BOYE, WILLIS KOOGLER, LEO LYSTER, LYLE LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S UNION, its officers and members,

JOHN DOE No. 1, JOHN DOE No. 2, JOHN DOE No. 3, JOHN DOE No. 4, JOHN DOE No. 5, JOHN DOE No. 6, JOHN DOE No. 7, JOHN DOE No. 8, JOHN DOE No. 9, JOHN DOE No. 10, JOHN DOE No. 11, JOHN DOE No. 12, RICHARD ROE No. 1, RICHARD ROE No. 2, RICHARD ROE No. 3, RICHARD ROE No. 4, RICHARD ROE No. 5, RICHARD ROE No. 6, RICHARD ROE No. 7, RICHARD ROE No. 8, RICHARD ROE No. 9, RICHARD ROE No. 10, RICHARD ROE No. 11, RICHARD ROE No. 12, PETER ROE No. 1, PETER ROE No. 2, PETER ROE No. 3, PETER ROE No. 4, PETER ROE No. 5, and PETER ROE No. 6,

Defendants.

ORDER

Heretofore the defendants appearing herein having, on June 22, 1939, filed their petition for new trial, and having, on June 22, 1939, filed their motion for an order amending the Findings of Fact, and having, on August 31, 1939, filed their motion (1) for an order authorizing and permitting said defendants to withdraw the proposed Conclusions of Law theretofore filed by the defendants; (2) for an order striking from the Findings and Conclusions theretofore made and entered the certain statement appearing on page 31 of said Findings and Conclusions, and set forth in the motion, and

[110] also striking paragraphs X and XXI from the Conclusions of Law,

It is considered, ordered and decreed that said petition of the defendants for a new trial be and the same is hereby denied and over-ruled, and that the said motions be and the same are hereby overruled and denied.

The court heretofore, on August 9, 1939, having filed a Supplemental Memorandum to the effect that the treble damages should be stricken from the decree, giving its reasons therefor, and the plaintiff herein having filed its waiver, disclaimer and remittitur of all damages assessed herein or claimed herein, or which might have been claimed in this cause in the trial thereof,

It is considered, ordered and decreed by the court that the plaintiff take nothing herein, or elsewhere, on account of its claim for damages in this cause of action, and the facts upon which the same was based, or which could have been claimed herein.

Dated: September 7th, 1939.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed September 7, 1939. [111]

And afterwards, to wit, on the 29th day of November, 1939, there was duly filed in said Court, a Notice of Appeal, in words and figures as follows, to wit: [112]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that H. B. Hinton, George Bambrick, J. B. Brandt, Charles J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, Charles Marks, Clyde Chase and Pacific Coast Fishermen's Union, its officers and members, defendants above named, hereby appeal to the United States Circuit Court of Appeals for the ninth circuit from that certain judgment and decree entered in this action on the 14th day of June, 1939, as amended by that certain order made and entered in said cause on the 7th day of September, 1939, and which judgment and decree became final on the 7th day of September, 1939, by virtue of an order made and entered on said date in this action, denying defendant's motion for a new trial.

The defendants appeal from said judgment and decree as amended and the whole thereof.

BEN ANDERSON

Attorney for Appellants.

Address: 1207 Guardian Building,
Portland, Oregon.

[Endorsed]: Filed November 29, 1939. [113]

And afterwards, to wit, on the 29th day of November, 1939, there was duly filed in said Court, an Undertaking on Appeal, in words and figures as follows, to wit: [114]

[Title of District Court and Cause.]

UNDERTAKING ON APPEAL

Know all men by these presents, That we, H. B. Hinton, George Bambrick, J. B. Brandt, J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, Charles Marks, Clyde Chase and Pacific Coast Fishermen's Union, its officers and members, by their attorney, as principal, and F. M. Arnold and F. I. Arnold, sureties, are held and firmly bound unto the Columbia River Packers Association, Inc., a corporation, plaintiff above named, in the just and full sum of Two Hundred and Fifty Dollars (\$250.00) for the payment of which well and true to be made, we and each of us do hereby bind ourselves, our successors, personal representatives, and assigns, jointly and severally, firmly by *this* presents. [115]

Sealed with our seals and dated this 29 day of November, 1939.

Whereas, The above named defendants have prosecuted *and* appeal to the United States Circuit Court of Appeals for the ninth circuit to reverse the judgment and decree of the District Court of the United States for the District of Oregon; heretofore rendered and entered in the above cause in favor of the above plaintiff and against the above defendants;

Now, therefore, The condition of this obligation is such that if the said defendants, the principals herein, shall prosecute their appeal with effect and answer all costs if the appeal is dismissed or the judgment affirmed, or answer such costs as the appellate court may award if the judgment is modified, then the said obligation shall be null and void, otherwise to remain in full force and effect.

H. B. Hinton	Harry Ansama
George Bambrick	Jack Ansama
J. B. Brandt	J. W. Beecroft
Chas. J. Mackie	Henry Boye
Glenn Murdock	Willis Koogler
Ferdinand Sandness	Leo Lyster
P. J. Barton	Lyle Lyster
Jack Curtis	Lawrence Noep
Leroy Chenowith	Garth Phillips
Walter Weaver	W. A. Pyrtz
O. Tanner	Andy Toppi
O. H. Brown	Charles Pilton
Newton Cannon	Charles Marks
Wm. Scholtens	Clyde Chase
Roy Reavis	Carl Pyrtz
Arthur Hertel	

and Pacific Coast Fishermen's Union.

By BEN ANDERSON

Their Attorney

F. M. ARNOLD

Surety

F. I. ARNOLD

Surety [116]

State of Oregon,

County of Multnomah—ss.

We, F. M. Arnold, and F. I. Arnold, being each duly and severally sworn, each for myself say: That I am worth the sum of Five thousand Dollars over and above all my just debts and liabilities, exclusive of property exempt from execution; that I am a resident free holder within the state of Oregon, and that I am not a counsellor, or attorney at law, sheriff, clerk, or other officer of any court.

F. M. ARNOLD

Surety

F. I. ARNOLD

Surety

Subscribed and sworn to before me this 29 day of November, 1939.

[Seal]

MARIAN MEYER.

Notary Public for Oregon.

My commission expires July 1, 1941.

Due service accepted this 29th day of November, 1939.

C. W. PECORE—J. G. P.

Of Attorneys for Plaintiff

[Endorsed]: Filed November 29, 1939. [117]

And afterwards, to wit, on the 29th day of November, 1939, there was duly filed in said Court, a Statement of Points upon which Appellant intends to Rely upon Appeal, in words and figures as follows, to wit: [118]

[Title of District Court and Cause.]

**STATEMENT OF POINTS UPON WHICH
APPELLANTS INTEND TO RELY UPON
APPEAL**

Appellants do hereby make the statement that in the prosecution of the appeal of this cause they intend to rely upon the following errors, to-wit:

I.

The District Court erred in including in paragraph XX of his Findings of Fact the following conclusion of law:

*** but the court further finds that this statute does not authorize the creation of a monopoly, nor take from an injured party the redress given to him by the Anti-Trust Laws of the United States;”

for the reason that it is improper to include conclusions of law in the findings of fact.

II.

The District Court erred in including in paragraph XXI of his Findings of Fact the following conclusion of law:

*** would have been guilty of violating the Anti-Trust laws of the United States;”

for the reason that it is improper to include conclusions of law in the findings of fact. [119]

III.

That the District Court erred in making and entering its Conclusions of Law numbered III, IV, V, VI, VII, XIII, XIV, XV, XVI, XVIII, XIX, XX and XXI and in making and entering the Conclusions of Law referred to in Paragraphs I and II of this Statement of Points for the reason that none of said Conclusions of Law is supported by the District Court's Findings of Fact; that the District Court in his Findings of Fact XX and XL found that the defendant Pacific Coast Fishermen's Union substantially conforms to the requirements of sections 521 and 522, Title 15, United States Code Annotated (Ch. 742, 48 Stat. at L. 1213); that section 522 of said Title 15 provides that if an association, organized pursuant to said Act, monopolizes or restrains trade in interstate or foreign commerce, the Secretary of Commerce shall institute proceedings against said association, and that the remedy provided for in said Section 522 is exclusive and that by virtue of the provisions of said Section 522, no private individual or corporation can institute an injunction or other suit or action against an association organized under the provisions of said Section 521, Title 15, United States Code Annotated (Ch. 742, Sec. 1, 48 Stat. at L. 1213) under the Anti-Trust Laws of the United States.

That the said District Court erred in making and entering each and all of the said Conclusions of Law above referred to for the further reason that the District Court found as a fact in its Findings of Fact No. XXXVIII that "There is no evidence offered in this case tending to show that the wholesale or retail price paid by consumers have been enhanced by the activities of these defendants," and that under and by virtue of said section 522, Title 15, United States Code Annotated (Ch. 742, Sec. 2, 48 Stat. at L. 1214) even the Secretary of Commerce has no authority to institute proceedings against any of such associations unless he has reason to believe that "such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of [120] any aquatic product is unduly enhanced by reason thereof."

IV.

That the District Court erred in making his Conclusions of Law VII, VIII, XVII, XX and XXI for the reason that said Conclusions of Law are not supported by any of the Findings of Fact of said Court and are contrary to law, in that the Court's Findings of Fact disclose that the dispute between the plaintiff and the defendant Pacific Coast Fishermen's Union, its officers and members involve persons who are engaged in the same industry or trade and that said dispute constitutes a labor dispute within the purview of the federal Norris-LaGuardia Act, 47 U. S. Stat. at L., pages

70-73 (29 U.S.C.A., 1938 Cumulative Supp. Secs. 101-114), and that, therefore, the District Court was without authority to issue an injunction in this suit.

V.

That the District Court erred in making and entering paragraphs III to VIII, both inclusive, of the decree in this cause for the reason that said portions of said decree are not supported by any of the District Court's Findings of Fact, and are contrary to law for the reasons set forth under points III and IV of this Statement of Points.

VI.

That paragraphs II and XII of the Conclusions of Law and Paragraph II of the Decree made and entered by the District Court are not supported by any finding of fact made by said court, and are, therefore, erroneous.

VII.

That the Findings of Fact made and entered by the District Court disclose that the District Court of the United States for the District of Oregon did not have jurisdiction of the subject matter of this suit for the reasons set forth in paragraphs III and IV of this Statement of Points. [121]

VIII.

That the District Court erred in making and entering its order denying the following motion of defendants:

"1. For an order authorizing and permitting said defendants to withdraw from the files and records of the above cause the Proposed Conclusions of Law heretofore filed by the defendants in said cause **.

"2. For an order striking from the Findings of Fact and Conclusions of Law heretofore made and entered by the Court in the above cause the following statement appearing on page 31 of said Findings of Fact and Conclusions of Law:

'That in addition to the Conclusions of Law foregoing and the Conclusion XXI ~~infra~~, the following Conclusions of Law requested by defendants are made (showing defendants' numbering and changes from the requested Conclusions as in the case of defendants requested Findings of Fact foregoing):'

"and also striking from the Conclusions of Law heretofore made and entered by the Court in the above cause paragraphs X to XXI, both inclusive, of said Conclusions of Law"

that the denial of the foregoing motion was an abuse of discretion on the part of the trial court in that at the time said motion was filed, defendants' motion for a new trial was pending before the court and under Rule 59 of the New Rules of Civil Procedure for the District Courts of the

United States adopted by the Supreme Court of United States, the trial court, while such motion was pending, was empowered to amend its findings of fact and Conclusions of Law; that under Rule 52 of said New Rules of Civil Procedure it was unnecessary for defendants to submit proposed findings or conclusions; and that said proposed Conclusions of Law submitted by the defendants, through the inadvertence of defendants' counsel, were in conformity with the principles of law enunciated by the trial Court, and were contrary to the rules of law urged by defendants' counsel for and on behalf of defendants at the trial, as disclosed by the affidavit of defendants' counsel attached to the Motion above referred to. [122]

(Signed) BEN ANDERSON

Attorneys for defendants and
Appellants

Due service of the within Statement of Points upon which appellants intend to rely upon appeal is hereby accepted in Multnomah County, Oregon, this 29 day of November, 1939, by receiving a copy thereof, duly certified to as such by Ben Anderson, attorney for defendants and appellants.

C. W. PECORE—J. G. P.

Of Attorneys for Plaintiff

[Endorsed]: Filed November 29, 1939. [123]

And afterwards, to wit, on the 29th day of November, 1939, there was duly filed in said Court, a Designation of Contents of Record on Appeal by Appellants, in words and figures as follows, to wit:

[124]

[Title of District Court and Cause.]

DESIGNATION BY DEFENDANTS AND APPELLANTS OF THE PARTS OF THE RECORD AND PROCEEDINGS TO BE INCLUDED IN THE RECORD ON APPEAL.

The defendants and appellants hereby designate the following portions of the record in the above cause to be included in the record on appeal in said cause:

1. Complaint.
2. Answer of defendants Charles Marks and Clyde Chase.
3. Answer of the other defendants.
4. Order allowing complaint to be amended by interlineation.
5. Motion of plaintiff to amend complaint to conform to evidence.
6. Order allowing foregoing motion to be amended.
7. Order dismissing as to the various John Doe, Richard Roe and Peter Roe defendants.
8. Memorandum opinion of the court.
9. Findings of fact and conclusions of law.
10. Decree.
11. Petition for new trial.

12. Waiver of damages and remittitur.
13. Supplemental memorandum opinion of court.
14. Motion of defendants, with affidavit, for order authorizing defendants to withdraw proposed conclusions of law and for order [125] striking certain portions of court's findings of fact and conclusions of law.
15. Order denying motion for a new trial and denying foregoing motions.
16. Notice of appeal with date of filing.
17. Bond on appeal.
18. This designation of parts of record to be included in the record on appeal.
19. Statement of points upon which defendants intend to rely upon appeal.
20. Clerk's certificate.

Dated this 29th day of November, 1939.

BEN ANDERSON

Attorney for Defendants and
Appellants.

Due service of the within Designation by Defendants and Appellants of the Parts of the Records and Proceedings to be included in the Record on Appeal is hereby accepted in Multnomah County, Oregon, this 29th day of November, 1939, by receiving a copy thereof, duly certified to as such by Ben Anderson, Attorney for Defendants and Appellants.

C. W. PECORE—J. G. P.

Of Attorneys for Plaintiff

[Endorsed]: Filed November 29, 1939. [126]

And afterwards, to wit, on the 9th day of December, 1939, there was duly filed in said Court, a Designation of Record on Appeal by Appellee, in words and figures as follows, to wit; [127]

[Title of District Court and Cause.]

DESIGNATION BY PLAINTIFF AND APPELLEE OF THE PARTS OF THE RECORD AND PROCEEDINGS TO BE INCLUDED IN THE RECORD ON APPEAL.

The plaintiff and appellee herein hereby designates the following portions of the record in the above cause to be included in the record on appeal in said cause:

1. The Proposed Findings of Fact proposed by the defendants.
2. The Proposed Conclusions of Law proposed by the defendants.

Dated December 8th, 1939.

JAY BOWERMAN

Attorney for Plaintiff [128]

State of Oregon

County of Multnomah—ss.

Due service of the within Designation by plaintiff, etc. by the delivery of a duly certified copy thereof as provided by law, at Portland, Oregon, on this 9th day of December, 1939, is hereby admitted.

BEN ANDERSON by KE
Of Attorneys for Defendants

[Endorsed]: Filed December 9, 1939. [129]

United States of America,
District of Oregon—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 129, both inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein numbered Civ. 126, in which Columbia River Packers Association, Inc., is plaintiff and appellee, and H. B. Hinton, et al., are defendants and appellants; that said transcript has been prepared by me in accordance with the designations of contents of the record, on appeal filed therein, and in accordance with the rules of court; that I have compared the foregoing transcript with the original record thereof and that the foregoing transcript is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with said designations as the same appear of record and on file at my office and in my custody, except that the proposed findings of fact and conclusions of law submitted by defendants and designated by appellee to be included in the foregoing transcript is not in my custody nor in the files of said cause.

I further certify that the cost of comparing and certifying the within transcript is \$20.35 and that the same has been paid by the appellants.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 23rd day of February, 1940.

[Seal]

G. H. MARSH, Clerk

By E. W. KNOWLES,

Deputy [130]

[Endorsed]: No. 9456. United States Circuit Court of Appeals for the Ninth Circuit. H. B. Hinton, George Bambrick, J. B. Brandt, Charles J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, Charles Marks, Clyde Chase and Pacific Coast Fishermen's Union, its officers and members, Appellants, vs. Columbia River Packers Association, Inc., a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed: February 24, 1940.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 9456

H. B. HINTON, GEORGE BAMBRICK, J. B.
BRANDT, CHAS. J. MACKIE, GLENN
MURDOCK, FERDINAND SANDNESS,
P. J. BARTON, JACK CURTIS, LEROY
CHENOWITH, WALTER WEAVER, O.
TANNER, O. H. BROWN, NEWTON CAN-
NON, WM. SCHOLTENS, ROY REVIS,
ARTHUR HERTEL, HARRY ANSAMA,
JACK ANSAMA, J. W. BEECROFT,
HENRY BOYE, WILLIS KOOGLER, LEO
LYSTER, LYLE LYSTER, LAWRENCE
NOEL, GARTH PHILLIPS, CARL PYRTZ,
W. A. PYRTZ, ANDY TOPPI, CHARLES
PILTON, CHARLES MARKS, CLYDE
CHASE and PACIFIC COAST FISHER-
MEN'S UNION, its officers and members,

Appellants,

vs.

COLUMBIA RIVER PACKERS ASSOCIA-
TION, INC., a corporation,

Appellee.

DESIGNATION BY DEFENDANTS AND AP-
PELLANTS OF THE PARTS OF THE
RECORD AND PROCEEDINGS TO BE
PRINTED AND THE POINTS UPON
WHICH DEFENDANTS AND APPEL-
LANTS WILL RELY.

To Hon. Paul P. O'Brien, Clerk of the above entitled court:

The defendants and appellants hereby designate that the entire record in the above named cause, filed in the above named Court, be printed, except that the captions, jurats and verifications be omitted. Points Upon Which Appellants Expect To Rely.

Upon this appeal appellants expect to rely upon the same points set out in their statement of points on which appellants intend to rely upon appeal heretofore filed herein, and which is by reference made a part hereof the same as though said points were set out herein in full.

BEN ANDERSON

Attorney for defendants and appellants

Due service of the foregoing is hereby accepted in Multnomah County, Oregon, this 23d day of February, 1940, by receiving a copy thereof, duly certified to as such by Ben Anderson, attorney for defendants and appellants.

JAY BOWERMAN

Of Attorneys for Plaintiff and Appellee.

[Endorsed]: Filed Feb. 24, 1940. Paul P. O'Brien,
Clerk.



NO. 9456

IN THE

United States Circuit Court of Appeals
For the Ninth Circuit

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE, GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS, LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEECROFT, HENRY BOYE, WILLIS KOOGLER, LEO LYSTER, LYLE LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S UNION, its officers and members,

Appellants,

vs.

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation,

Appellee.

Upon Appeal from the District Court of the United States for the District of Oregon.

PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

**United States Circuit Court of Appeals
for the Ninth Circuit**

Excerpt from Proceedings of Tuesday, January 28, 1941.

Before: Garrecht, Haney and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal in above cause argued by Mr. Ben Anderson, counsel for appellants, and by Mr. Jay Bowerman, counsel for appellee and submitted to the court for consideration and decision.

**United States Circuit Court of Appeals
for the Ninth Circuit**

Excerpt from Proceedings of Saturday, March 29, 1941.

Before: Garrecht, Haney and Stephens,
Circuit Judges.

[Title of Cause.]

**ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF
DECREE**

By direction of the Court, ordered that the type-written opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that

a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]
Upon Appeal from the District Court of the United
States for the District of Oregon.

OPINION

Before: Garrecht, Haney and Stephens,
Circuit Judges.

Haney, Circuit Judge:

Appellee was successful in its suit brought under the anti-trust laws to obtain a decree enjoining appellants from interfering with appellee in its purchase of fish and other marine products, and adjudicating that all contracts entered into between the Pacific Coast Fishermen's Union and processors and dealers, whereby the latter agreed not to purchase such products from persons not members of such union, to be void.

The Pacific Coast Fishermen's Union, hereafter called the union, is an organization of persons engaged in fishing, and is chartered by the International Fishermen and Allied Workers of America and the Congress for Industrial Organizations. The union is also a member of the Maritime Federation of the Pacific which is a federation of labor organizations of the Pacific Coast including the International Longshoremen and Warehousemen's

Union, the Alaska Fishermen's Union, the United Fishermen's Union, the Cannery Workers Union, the Marine, Cooks and Stewards Union, the Ships Radio Operators Union and other organizations.

The union issues charters to various local unions in various ports of the States of Oregon and Washington, and the contracts hereinafter referred to are entered into between the packers of and dealers in fish and the union or such locals.

The packers of and dealers in fish belong to an organization called the Commercial Fisheries Association. Such Association has throughout its existence, bargained with the Union, and has been the collective bargaining agency for the packers and dealers. The union and the Association reach an agreement as to the terms of the contracts to be entered into between it or the locals and the packers of and dealers in fish.

It has been and is the practice of the packers of and dealers in fish to purchase fish and other marine products of the Pacific Ocean and its tributaries from various fishermen who are independent contractors. About 90% of the fishermen belong to the union. We may assume that the union has an effective monopoly on the supply of fish caught, and that interstate or foreign commerce is affected thereby, so that the facts regarding these matters need not be stated. Of course there is nothing to prevent operation of their own fishing fleets by the packers.

The union had procured contracts with the pack-

ers and dealers for the 1936, 1937 and 1938 seasons which contained the provision:

"That it is further understood by all parties herein that the union members shall not be required to work with and/or alongside non-Union employees."

It is conceded that such provision prohibited the packers and dealers from purchasing from anyone but members of the union.

The navigable waters of the Umpqua River and its tributary Smith River are principal sources of supply of shad. The shad is available there for about 60 days each year beginning in April. Under the laws of Oregon the season for commercial fishing opened on April 20, 1939. Fishermen captured fish and sold them to appellee from that date until April 29, 1939. Appellee withdrew from the Commercial Fisheries Association, and declined to enter into a contract with the union on the ground that its execution thereof would violate the anti-trust laws of the United States. The union, thereupon, by threats, intimidation and coercion induced the fishermen not to sell fish to appellee, and prevented appellee from buying any fish caught in the waters mentioned until May 4, 1939, when the court below issued a temporary restraining order against appellants. Appellee was damaged in the amount of \$600 by the refusal to sell and deliver fish to it for the period from April 29, 1939 until May 4, 1939.

The court below held that the contracts entered into were void because in restraint of trade, that ap-

pellants entered into a plan, scheme and conspiracy in restraint of trade. It enjoined appellants interfering with appellee in the purchase of fish. This appeal followed.

Appellants contend that the injunction is prohibited by the Norris-La Guardia Act (29 USCA §§101-115), because of the failure to comply with the procedural prerequisites stated in the act. Appellee makes no argument in reply to this contention.

Section 7 of that act (29 USCA §107) provides in part:

“No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after * * * findings of fact by the court, to the effect— * * *”

Five matters are mentioned in the statute. The court below did not make findings as to one or more of them. If this is a “case involving or growing out of a labor dispute” as defined in the act, then the court below lacked jurisdiction to issue the injunction.

The particular words of section 7 which are in controversy are “in any case involving or growing out of a labor dispute, as herein defined”. The definitions are given in §13 of the act (29 USCA §113) as follows:

“When used in this chapter, and for the purposes of this chapter—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as herein-after defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee * * *"

There are two constructions which might be given to §13. One is that subdivisions (b) and (c) are applicable to the whole of subdivision (a). The other is that subdivisions (b) and (c) are applicable only to the last clause of subdivision (a). Lacking the legislative history of the act, we think we should not decide which construction is correct unless necessary.

The trial court's holding is that there was no "labor dispute" because "terms or conditions of employment" were not involved. We believe the trial court too narrowly construed the act.

The fact that the members of the union were not, strictly speaking, "employees" of appellee or other packers and dealers does not preclude the holding that a labor dispute existed. *Lauf v. E. G. Shinner & Co.*, 303 U. S. 323; *New Negro Alliance v. Grocery Co.*, 303 U. S. 552, §13(c) of the act. It must be conceded that there was a "controversy". Therefore if such controversy was "concerning terms or

conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment" then there was a "labor dispute" as defined by §13(e) of the act.

New Negro Alliance v. Grocery Co., *supra*, is distinguishable on its facts. There the controversy was over the race of the people whom the company might or did employ. Here, no such controversy was present, because appellee did not "employ" persons as that word is used in the strict sense. We believe that *Drivers' Union v. Lake Valley Co.*, 311 U. S. 91 is controlling and compels the conclusion that a "labor dispute" in fact existed. There, as here, the controversy was between what we call "employers" on one side, and independent contractors on the other side. There are minor distinctions between the two cases such as the fact that the independent contractors buy from the employers in one, whereas here they sell to the employers, but we believe they are insufficient to change the rule announced in the *Lake Valley case*.

Independently of that case, however, we think the act in question is applicable. In construing the words "terms or conditions of employment" the trial court apparently limited them to mean the ordinary case where one person hired out to another for a stipulated wage or salary. We think such a narrow construction is not justified. The words "terms or conditions" need no further explanation. It is obvious that the controversy over the question

as to whether appellee should purchase fish from members of the union only, was a "term" or "condition". The word "employment" is defined in Webster's New Int. Dict. (2nd Ed.) p. 839 as follows:

"1. Act of employing, or state of being employed; as to seek employment.

"2. That which engages or occupies; that which consumes time or attention; also, an occupation, profession, or trade; service; as agricultural employments."

It can be seen that if the word "employment" is used in several of the senses above mentioned, it is broad enough to cover the situation disclosed here. "The words of a statute are to be read in their natural and ordinary sense, giving them a meaning to their full extent and capacity, unless some strong reason to the contrary appears". *Miller v. Robertson*, 266 U. S. 243, 250. See also: *Old Colony Co. v. Comm'r*, 301 U. S. 379, 383. We are unable to find any indication that Congress gave the word a restricted meaning.

The above holding obviates decision of other points presented. The injunction, we think, was granted without jurisdiction to do so, and the portion of the decree granting an injunction must be stricken. We remand the cause to the court below for further consideration regarding the remainder of the decree, to determine whether the bill should

be dismissed in view of *United v. Hutcheson, et al.*, U. S. ..., February 3, 1941, or whether parts of it may stand.

Reversed and remanded with directions to take further proceedings in accordance with the views herein expressed.

BERT EMORY HANEY
FRANCIS A. GARRECHT
Circuit Judges.

[Endorsed]: Opinion. Filed Mar. 29, 1941.
Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9456

H. B. HINTON, et al.,

Appellants,

vs.

COLUMBIA RIVER PACKERS ASSOCIA-
TION,

Appellee.

DECREE

Appeal from the District Court of the United States for the District of Oregon.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Oregon, and was duly submitted:

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed with costs in favor of the appellants and against the appellee, and that this cause be, and hereby is remanded to the said District Court with directions to take further proceedings in accordance with the views expressed in the opinion of this court.

It is further ordered, adjudged, and decreed by this Court, that the appellants recover against the appellee for their costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered March 29, 1941.
Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, May 13,
1941.

Before: Garrecht, Haney and Stephens,
Circuit Judges.

[Title of Cause.]

**ORDER DENYING PETITION
FOR REHEARING**

Upon consideration thereof, and by direction of the Court, it is ordered that the petition of appellee, filed April 26, 1941, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Jay Bowerman, Esq., counsel for the appellee, and good cause therefor appearing, it is ordered that the issuance, under Rule 28, of the mandate of this Court in the above cause be, and hereby is stayed to and including June 14, 1941; and in the event the petition for a writ of certiorari to be made by the appellee herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANCIS A. GARRECHT

United States Circuit Judge

Dated: San Francisco, California, May 15, 1941.

[Endorsed]: Filed May 15, 1941. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED UN-
DER RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred fifty-six (156) pages, numbered from and including 1 to and including 156, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellee, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 21st day of May, 1941.

• [Seal]

PAUL P. O'BRIEN,

Clerk.



SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 20, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7899)